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PARLIAMENTARY CONTROL OF EXTERNAL RELATIONS IN THE BRITISH DOMINIONS

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I

The British parliamentary system presumes a working government majority, or else an appeal to the electorate, with the inevitable confusion of issues involved therein. Hence, in studying the conduct of foreign relations throughout the British Commonwealth, little profit is to be gained from analysis of anomalous instances where governments and parliaments are found to have been at variance on external policies. Whatever familiarity with the "checks and balances" tradition may incline us to assume, such cases are no adequate criterion of democratization of control. On the contrary, this is to be found in the degree to which parliaments not merely are called upon to ratify governmental acts and policies, but are taken into the confidence of governments and consulted before decisions are conclusively formulated. In the second place, "external relations" should, in the case of the Dominions, include relations with other members of the Commonwealth, especially the mother country. These still comprise the bulk of their external contacts; and from the standpoint of the problem now under discussion, no actual difference in kind exists between them and truly foreign affairs. Moreover, it is upon the procedural foundation of the one that the principles governing the conduct of the other have been based.

As it happens, the issue of parliamentary control has been

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agitated most zealously in connection with representation at the Imperial Conference, the supreme council of the British League of Nations. Although the principles governing the organization, procedure, and powers of the Conference have been recognized for upwards of a generation, the lively apprehensions of nationalists at the resumption of centralizing projects after the war, reinforced by the oppositions' normal itch for power, induced frequent efforts to limit the premiers' discretion at Conference sessions and vindicate the supremacy of the local parliaments. The repudiation by the first British Labor government of the 1923 Conference recommendations regarding imperial preference and the Singapore base evoked protests from Premiers Bruce (Australia) and Smuts. But in the latter instance, General Hertzog countered with the assertion that the premier's attitude made their parliament a mere appendage of the Conference; and Col. Creswell (Labor) moved: "That this House holds that promises made by a government at an Imperial Conference impose no binding obligation on the country or Dominion concerned until ratified by its parliament, and dissents from the contrary view put forward by the prime minister in a public speech at Johannesburg on the 14th December last."[1] So also, in deference to the attitude and influence of the Labor Opposition, Premier Massey offered a similar resolution in the New Zealand House.[2] Premier Bruce actually submitted the conclusions of the Imperial and Economic Conferences of 1923 to parliamentary ratification,[3] which was a distinct innovation. Premier King also, in anticipation of the stand he intended taking at the 1926 Conference, presented for belated ratification the 1923 resolution endorsing devolution in the conduct of negotiations.[4] So too,

[1] *Journal of the Parliaments of the Empire*, V, 362-374; negatived 61-64 (January 29, 1924).

[2] "That resolutions passed at Imperial Conferences are only obligatory upon any Dominion of the Empire if and when they are approved by the parliament of that Dominion," *ibid.*, V, 112-118 (July 5, 1924).

[3] *Ibid.*, V, 565-591 (March 27, 1924).

[4] *Ibid.*, VII, 530-549 (June 21, 1926).

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parliamentary approval was sought for the report of 1926 in South Africa,[5] and for the recommendations of 1929 in the Irish Free State.[6] Nevertheless, these moves were seemingly inspired more by the desire to secure the added weight of local parliamentary endorsement for Conference decisions which the premiers themselves favored than by zeal for the extension of parliamentary control.

Another phase of this attack on the Imperial Conference has been the effort to substitute in its proceedings the principle of delegation for that of representation. The 1921 session was awaited by the nationalist oppositions throughout the Dominions with an anxiety commensurate with the avowed hope of most imperialists that it would frame a constitution for the Empire on federal lines. Hence, Mr. Mackenzie King endeavored to pass a motion specifically restricting in several respects the scope of decisions affecting Canada.[7] In New Zealand, Mr. Malcolm (Reform) urged that the invitations to the Conference should be addressed to the various parliaments, which would appoint delegates *ad hoc* to forestall usurpation by the premiers;[8] and Mr. Holland (Labor) moved that representation should be through the high commissioners in Britain, instructed by parliament.[9] A proposal similar to the latter was made by General Hertzog in South Africa, who expressed the fear that although Premier Smuts could not commit parliament, yet he might in the imperial atmosphere of London compromise himself and his supporters.[10] Premier Hughes assured the Australian House that he asked merely for authorization to renew the Anglo-Japanese alliance on terms that would safeguard the "white Australia" policy, and that no

[5] *Ibid.*, IX, 472-485 (March 8, 1928).

[6] *Ibid.*, XI, 485-494 (March 19, 1930). Canada and South Africa followed suit in May, *ibid.*, XI, 652 ff., 782 ff.

[7] *Ibid.*, II, 545; negatived 96-64 (April 27, 1921). Nevertheless, when premier, Mr. King refused to state beforehand the stand he intended taking on specific issues at the 1923 Conference; *ibid.*, IV, 784.

[8] *Ibid.*, III, 181 (October 18, 1921).

[9] *Ibid.*, II, 648-649 (March 17, 1921).

[10] *Ibid.*, II, 671-673 (May 23, 1921).

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defense scheme would be accepted without parliamentary sanction.[11]

Similarly, in anticipation of the 1923 session, a Labor member proposed limitations in the Australian House.[12] In New Zealand, meanwhile, the official opposition's amendment to the Address in Reply included criticisms of the government's failure to consult parliament sufficiently on external relations; but the Labor amendment went further and demanded that their spokesmen go to the Conference as delegates specifically instructed by parliament.[13] As for the prime ministers and their supporters, they were unanimous in stressing the futility of the Conference and of the sacrifices entailed by attendance at its sessions if their hands were to be tied by parliamentary instructions. An analogous scheme emanating frequently from opposition benches was the inclusion in the Conference membership of representatives of parties other than those in power. Although it implied a marked lessening of the premiers' discretion, it would probably have tended to enhance the influence of the Conference rather than that of the constituent parliaments.[14]

Publication of the interchanges among the British governments, especially of Imperial Conference proceedings, is obviously of great interest to the several parliaments. But although the question of publicity has been debated at every Conference session, the existing basis can hardly be termed a satisfactory one. The prevailing secrecy is not merely an ill omen for parliamentary control in actual foreign affairs; from the nature of the relationships involved, it lends itself to peculiarly grave abuses. Inevitably, statements which go beyond the published record, and which at times are hardly reconcilable, are made in the various parliaments; yet verification is

[11] *Ibid.*, II, 610, 618 (April 13, 1921).

[12] *Ibid.*, IV, 574 (June 14, 1923).

[13] *Ibid.*, IV, 861-876 (June 14, 1923); the latter motion was negatived 50-16.

[14] See Mr. MacDonald's interesting proposal and the Dominion premiers' comments thereon (1924), in Cmd. 2301; for recent revivals of the multi-party suggestion, see *Journal*, IX, 459, 466; X, 545, 554; XI, 30.

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precluded. Oppositions, at least in the Dominions, are shown by the debates to be chronically in an attitude of speculation as to the course of events, even as to the official attitude of their own governments in Imperial Conferences. Insinuations and retorts, charges and countercharges continually fly, amid sparring for party advantage. Where governments desire to furnish additional information, requests for general consent are in order, first of all to the home government as *primus inter pares;* but apparently a single premier can enjoin the publication of data to which all would seem reasonably entitled. This opens the way for evasions, "alibis," and diffusion of responsibility. Downing Street may even be made to bear the onus of responsibility, and Nationalist capital made of it, when depriving the opposition of ammunition for debate is in the premier's own interest. Conversely, the existence of such a situation may well place a willing premier in an equivocal light.[15]

Several factors conspire to hinder improvement in this situation. Chief among them is the vested interest which the governments have in the maintenance of secrecy. It secures the exercise of their own discretion and concentrates power in their hands. Performance of the time-honored function of the opposition presumes something to oppose; yet it is too much to expect the government to furnish more material for criticism than it is obliged to produce. This factor is reinforced by elements in both nationalist and coöperationist policy. Prior to the war, the former had adopted Fabian tactics against the imperialist drive, and hence were averse to offering much data for parliamentary discussion of their attitude.[16] More persistent features are their theory that the relations of the

[15] For striking instances, see *Journal*, III, 345-346, 501; IV, 272, 279, 511; and V, 240; also the acrimonious interchanges in the Canadian House (June 9, 1924) as to the extent to which Premier King had made his position regarding the Lausanne negotiations clear to the 1923 Conference.

[16] Thus the suppression of the record of the 1902 Conference, which in retrospect seems the most critical in the history of the imperial federation movement, was in deference to Laurier's wishes; see Cd. 1723.

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Dominions are individually with the home government, and their antipathy to recognizing the existence of problems common to all.[17] From the viewpoint of advocates of coöperation among the British nations, the prospect is little better. The stimulus to diversity in policy and the airing of disagreements implied in the enhancement of control by several separate parliaments is hardly favorable to their aims.[18]

II

In turning to consider relations with countries actually foreign,[19] it is perhaps best from the standpoint of convenience to deal with parliamentary control in descending order of its effectiveness, which means to discuss the various steps in the conduct of external affairs in reverse series, beginning with the ratification rather than the initiation of policies. Treaty ratification is the most impressive, if hardly the most adequate, mode of parliamentary participation in the conduct of foreign policy. Although formal parliamentary ratification was not the practice prior to the war, the nature of the treaties at issue was such that a considerable measure of control was exercised

[17] Thus, in replying to a protest at the Canadian parliament's being left in ignorance of the Australian and New Zealand attitudes at the 1909 Defense Conference (those, in the opposition view, strongly reflected on Canadian coöperation in defense), Premier Laurier argued (November 19, 1909) that the arrangements of the several governments with the mother country were independent of one another (Canada, *Commons Debates*, session 1909-10, cols. 206-209). Similarly, when Mr. Meighen (June 13, 1923) inquired regarding a statement in the British House that the Pacific Dominions had strongly urged the coöperative fortification of the Singapore base, Premier King refused to take steps to amplify the published record of the 1923 Conference on this point (*Journal*, IV, 512).

[18] See *Journal*, VI, 225.

[19] Dominion participation in the conduct of "high policy," which is essentially a war and post-war development, has followed the principles established during the preceding period for commercial diplomacy, i.e., devolution of negotiations upon the Dominions, redefinition of Dominion relations to existing treaties, and the insertion in new treaties of clauses providing that the Dominions should not be bound unless they expressly adhered thereto. Of these, the salient examples are, respectively, the Halibut Treaty of 1923 (Canada-U.S.), the Washington Four-Power Treaty superseding the Anglo-Japanese alliance, and Article 9 of the Locarno Pact.

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through the necessity of securing legislation to render them effective. In the case of Canada, for instance, parliamentary action was required as a sequel to the Treaty of Washington (1871), and the reciprocity treaties with France (1892-3 and 1907).[20] The debate on the bill implementing the International Boundary Waters Treaty of 1909, incidentally, was made the occasion of Mr. Borden's most emphatic plea for the practice of parliamentary ratification. Similarly, the principle having been adopted a half-century ago that Imperial commercial treaties should henceforth include clauses exempting the Dominions unless and until they expressly adhered thereto,[21] the measures providing for such adhesion frequently involved parliamentary action.[22]

The submission of the Versailles treaties to all the Dominions for approval was a precedent which distinctly enhanced the importance not only of the Dominions but of their parliaments as well. It was also a personal triumph for Sir Robert Borden. During his long term as leader of the opposition in Canada he had contended strenuously for this principle—notably in connection with the Alaska Boundary Convention in 1903[23] and the International Boundary Waters Treaty of 1909[24]—against a premier who adhered strictly to the traditional exercise of the prerogative in such matters. In the latter case, his argument was strengthened by the fact that since the treaty had been before the American Senate, it had become a matter of public discussion in Canada from press reports before Canada's own parliament had seen it or could take official cognizance of it, which (he claimed) put her in a ridiculous light.[25] In office he maintained his contention, this

[20] Porritt, *Fiscal and Diplomatic Freedom of the British Overseas Dominions*, p. 207.

[21] C. 7553, pp. 5-6, 69; Keith, *Responsible Government* (2nd ed.), pp. 848-853.

[22] E.g., Canadian acts of January, 1907, bringing the Dominion within the scope of the Anglo-Japanese treaty of 1894; Canada, *Commons Debates* (1906-7), cols. 1546-53; *Sessional Papers* (1907-8), no. 74b.

[23] Canada, *Commons Debates* (1903), col. 14802.

[24] *Ibid.* (1909), cols. 633ff.; (1909-10), cols. 37, 6647ff.; (1910-11), cols. 9128ff.

[25] *Ibid.* (1909), cols. 550, 633ff. Objection by the United States appears to

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time in vindication of Dominion rights against the home government, and successfully.[26] Throughout the discussions, the issues of Dominion and parliamentary control were so intermingled that it is not clear whether the desire to embarrass the opposition or to avoid raising thorny problems of Imperial relationships was the stronger motive in Sir Wilfrid Laurier's conservative attitude on the matter. So, too, the Liberal opposition in Canada and the nationalists in South Africa deprecated submission of the peace treaties to Dominion ratification, partly because it was a government proposal, though mainly because they eschewed the formal acceptance of external obligations.[27]

Since the war, the Versailles precedent has determined the general practice regarding treaty ratification, although mere cabinet action has been resorted to in several cases held to be of minor importance or only remotely affecting the Dominion, especially if its parliament did not happen at the time to be in session.[28] Thus the principle is recognized that Domin-

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have been a factor in preventing submission to the Canadian House; see *Canadian Annual Review* (1909), pp. 29-30.

[26] His demand that the peace treaties be made subject to ratification by the Dominion parliaments was in terms identical with that made during a debate on the Boundary Waters Treaty: "Such approval should be obtained in the case of treaties imposing any burden on the people, or involving any change in the law of the land, or requiring legislative action to make them effective, or affecting the free exercise of the legislative power, or affecting territorial rights." Canada, *Sessional Papers* (1919 special session), no 41j, pp. 10-13; cf. *Debates* (1909-10), cols. 6647ff.

[27] *Journal*, I, 87-105, 193-220, 322-327, 384-387, 464-469, 540-554, 741-743.

[28] Thus the treaty with Czechoslovakia was assented to in respect of Canada by order in council (*Journal*, I, 465), as was also the Franco-Canadian commercial treaty of 1921 (*ibid.*, II, 346); while the Italian trade convention of 1923 was submitted to parliament (*ibid.*, IV, 814). In defending his course regarding the Chanak affair, Premier King made much of the contention that the Canadian parliament had never ratified the Sèvres treaty, but had merely passed an enabling act upon which the government had taken no action (*Can. Ann. Rev.*, 1922, p. 185). As regards certain League protocols approved in 1922, the premier stated that they were submitted for ratification because parliament was then in session (III, 568). In South Africa, General Hertzog opposed the grant of powers to the government in the Treaties of Peace Act, 1921, on the ground that the peace treaties with Austria, Hungary, Turkey, and Bulgaria had not been submitted to parlia-

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ion governments may not incur positive obligations of any importance without parliamentary sanction,[29] so that control in this phase of external relations is fairly well established.[30] There is another aspect of the problem, however, which appears to be of equal significance, and yet to have escaped the attention it deserves. What of the numerous cases in which the decision of the government is in the negative and it declines to submit for parliamentary consideration projects of which it disapproves? Such cases during recent years have involved some of the most momentous issues of Britannic history—for instance, the attitude of Canada during the Chanak and Lausanne episodes, the rejection of the Geneva Protocol, and the Dominions' failure to adhere to the Locarno Pact—on none of which have definite pronouncements by the parliaments been recorded.

The Chanak affair offers an excellent illustration of the difficulties and possibilities of parliamentary control in a crisis. The incidents occurred over a week-end. The situation appeared to call for immediate and decisive action. Premier Lloyd George cabled the Dominion governments (Friday, September 15, 1922) informing them of the course intended and asking whether they desired to associate themselves with it through the dispatch of contingents.[31] General Smuts was away

ment; this omission was defended on the plea that parliament was not then in session (*ibid.*, II, 906-908).

[29] Although senatorial ratification is generally secured, it should be noted that governments consider themselves amenable only to the lower house. The plea that the approval is by parliament, necessarily implying action by both houses, has been unsuccessfully advanced in the House of Lords and the South African Senate; *Journal*, X, 384-390; XI, 255, 451-452. Cf. discussion in Canadian Senate, *ibid.*, XI, 347-350.

[30] In fact, members of the present Canadian government maintained, while in opposition, that when legislation is required to implement a treaty, actual enactment of such legislation should precede the final act of ratification (*ibid.*, X, 847-851).

[31] This appeal was intended primarily for Australia and New Zealand, which had a special interest in the Straits, but was sent *pro forma* to Canada and South Africa as well. For the data and debates on the episode, see *Journal*, IV, 94-104, 138-145, 268-283, 586-593, 619-621; *Can. Ann. Rev.* (1922), pp. 174-89; also Mr. J. S. Ewart's characteristic discussion, *Canada and British Wars*.

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in Zululand, and did not hear of the emergency until it had passed; Premier King, too, was absent from Ottawa until the following day. The Australian and New Zealand parliaments happened to be in session, but that of Canada was prorogued from June 27 to January 31. Premier Massey and some colleagues, who were attending a public function when the cable arrived late Saturday evening,[32] held a cabinet meeting on the spot, and sent an affirmative answer within the hour. Premier Hughes was almost equally prompt. Premier King consulted his cabinet on Monday and issued a statement to the press that "it is the view of the government that public opinion in Canada[33] would demand authorization on the part of parliament as a necessary preliminary to the despatch of any contingent." He communicated this attitude to the home government, with an inquiry (answered in the negative) whether the summoning of a special session seemed urgent.

Thus, despite the invocation of his favorite formula,[34] Mr. King's decision, like the positive ones in Australia and New Zealand, was rendered on the sole authority of the cabinet. In the latter cases, the action was at once submitted to the verdict of parliament; but in Canada there was no opportunity to pronounce upon the issue until the belated discussion of it during the debate on the Address in February. In both houses in Australia, the premier's action was criticized by the opposition (Labor) on the score of insufficiency of data in his statement to parliament and undue exercise of authority. In New

[32] New Zealand time.

[33] For a résumé of opinion and spontaneous offers of enlistment, see *Can. Ann. Rev.* (1922), pp. 181-184.

[34] Briefly, Sir Wilfrid Laurier's general assertion of Dominion autonomy in external as in domestic affairs (eventually embodied in the Balfour report of 1926) was circumscribed by the late Canadian government to a specific vindication of parliamentary control in foreign relations—against the exercise of discretion by the cabinet on the one hand and popular referenda on the other—and became a stereotyped formula to be invoked whenever external obligations threatened. It constitutes the salient example of a confusion between constitutional questions wholly internal to each Dominion and those involving relationships with the mother country which has continually beset the controversy over Dominion status. See the present writer's *Dominions and Diplomacy*, index under "Laurier policy."

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Zealand, the Labor opposition answered Premier Massey's resolution approving his course with one of censure on grounds similar to those alleged in Australia.[35] In Canada, by way of contrast, the Conservative opposition launched tirades at the government's inaction in the crisis and its futile hope of evading international responsibilities. In all three cases, as usual, the issue of parliamentary control was not clear-cut, but merged with that of Imperial coöperation.

The Near East crisis exemplifies a case in which the exercise of cabinet discretion seems imperative but the earliest opportunity of invoking parliamentary sanction should be utilized. In the other instances cited, however, the emergency feature was not present, basic lines of policy for the future were involved, and a good case for consultation with parliament, even while decisions were in process of formulation, could certainly be argued.[36] Yet in connection with the Lausanne Conference, for instance, Premier King's government conducted a series of interchanges over a long period with two British administrations, all seemingly directed toward the establishment of a definite relation to the settlement, and culminating in their refusal to recommend the treaty to parliament for ratification. The antecedents, as well as the *coup d'état* itself, which for the time being relegated Canada to the pre-war status of being bound by a treaty in the actual negotiation of which she had not even been consulted (obviously a most serious issue of policy), were carried through without reference to parliament.[37] It is a matter of record, also, that the Geneva Protocol was not laid before any of the parliaments, but was rejected in

[35] Negatived 67-10.

[36] For instance, the first MacDonald government, instead of ignoring the imperial preference resolutions of the 1923 Economic Conference held under the auspices of their predecessors, took the ground that they should be submitted to parliament for such action as that body might determine (*Journal*, V, 6, 10, 198). For the significant extension of parliamentary control over foreign policy during this administration, and its prompt repudiation by their successors, see *ibid.*, V, 229; VI, 28-29, 223-226; *Annual Register* (1025), p. 29.

[37] This whole episode is somewhat tortuous, but lack of space precludes discussion here. See the correspondence (unfortunately incomplete) in Cmd. 2146, and the Canadian debate of June 9, 1924. For criticisms, see Corbett and Smith, *Canada and*

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each case on the sole authority of the government.[38] The same holds true of the decisions of the Dominions not to adhere to the Locarno Pact, save that in this case the attitudes of their governments were not signified until the issue had been discussed in the Imperial Conference of 1926.

The right of parliament to pass upon the policies involved in such cases as have just been cited would seem as defensible, as essential even, as in those where affirmative action is now required. True, it has long been the practice for premiers on their return from Imperial Conference sessions to render parliament a report of their mission, which is then debated; and a similar procedure is becoming customary in the case of major episodes in foreign relations.[39] Nevertheless, the control which this seems to establish is mainly illusory. At best, it is ex post facto, hence merely punitive; nor is it effective against a recalcitrant government. If parliament is not in session, matters must wait. There is, of course, the inevitable debate on the

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World Politics, pp. 94-98, and the present writer's *Dominions and Diplomacy,* Vol. II, pp. 147-166. See also footnote *supra* on the King formula.

[38] This serious consideration did not escape the attention of the oppositions. In Canada, the veteran senator, Sir George E. Foster, in a scathing denunciation, noted that parliament had been in session for more than a month prior to the rejection. In Australia, the leaders of both oppositions (ex-Premier Hughes and Mr. Charlton), divided though they were on the issue itself, maintained that parliament should have been specially summoned to pass upon it (*Journal,* VI, 318-322, 536-537).

[39] Action on the Geneva Protocol, for instance, may be summarized as follows. The rejection by the British government on behalf of the Commonwealth was announced to the League Council March 12, 1925, and debated in the Commons March 24. The Canadian decision for rejection was despatched to London March 4; the papers brought down and the issue debated March 12. The Australian decision was signified March 5, noted in the governor-general's speech June 10, and debate was resumed on submission of the League delegates' report August 14. The New Zealand government advised Downing Street of its position in a memorandum of January 6, 1925, but (owing to the fatal illness of the premier) parliamentary consideration was postponed until the simultaneous debate on the Locarno Pact September 28. A statement on the South African rejection was made in the House by Premier Hertzog during the debate on the estimates May 6. The Free State government does not appear to have informed Downing Street of its attitude until after a statement in the Dáil by the minister of external affairs on May 13. Cmd. 2458 and *Journal,* VI, *passim.*

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Address at the opening of the succeeding session. This is the occasion, however, of omnibus, desultory, and frequently irresponsible criticism; and in any case, besides being confused with a hodge-podge of other issues, such discussion of the foreign problem is normally too belated for effective action thereon. Even after the episode is seemingly closed, the pleas of public interest or the unwillingness of other governments to permit publication may be invoked to postpone parliamentary consideration. It is in connection with these cases of negative decisions upon crucial issues that the abuses of continued secrecy regarding interchanges among the British governments are most patent and least excusable. True, in each instance the action taken seems eventually to have won fairly general endorsement in the respective countries. It is equally true, however, that at the time the opposition case went more or less by default, that had there been adequate discussion before the final decision was rendered, the implications of alternative courses would have been more clearly set forth, and at least the educative effect upon governments, parliaments, and electorates would have been salutary.

These considerations apply just as forcibly to the problem of the extent to which governments should take parliaments into their confidence before action on policies is finally determined. The most definite and sweeping assertion of parliamentary control in this respect has been made by the Irish Free State. Article 49 of the Free State constitution, it will be recalled, stipulates that, save in case of actual invasion, the country shall not be committed to active participation in war except by the assent of parliament—an injunction which under a parliamentary system would seem to imply a considerably greater degree of antecedent control by the legislative body than does the corresponding provision in the American constitution. To remove any doubts in this regard, the constitutional requirement has been supplemented by a resolution introduced by the leader of the opposition, concurred in during the debate by the leaders of the government parties, and assented to by the Dáil on February 5, 1926. This affirms that the Dáil should be

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kept informed, by ministerial statements and by publication of relevant documents, as to important developments in foreign affairs in which the Irish Free State is, or may be, concerned through membership in the League of Nations or British Commonwealth.[40]

Probably no definite principles can be laid down as to the desirable or practicable extent of antecedent parliamentary control over external policies. Although "open diplomacy" has of recent years become a fetich in many quarters, it is nevertheless a procedural issue which does not solve the real problem of rendering underlying interests and motives articulate. Moreover, despite the vital concern of the populace in the outcome, foreign affairs is the sphere of governmental activity in which the interest and comprehension of legislators (to say nothing of electorates) is perhaps least apparent—a basic reason why in this sphere the area of effective control tends to be most concentrated. Concentration of responsibility is essential; in any case, it is necessary to provide for crises calling for the exercise of governmental discretion in anticipation of parliamentary authorization. Furthermore, it is too much to expect that parliaments can participate actively in pending negotiations, or that governments will jeopardize their undertakings by giving publicity to the details of their projects before achieving them. Indeed, if the "national interest" were not still a vital factor, the presence of oppositions even more piratical than the governments would impose a large measure of secrecy if any policies at all are to be brought to fruition.

Notwithstanding all these considerations, there should surely remain an ample field for parliamentary control in the discussion of the various factors in a situation, the weighing of alternative modes of settlement, the laying down of general lines of policy for the guidance of the governments. Granted that the day-to-day application of foreign, as of any other, policies should remain in the hands of the governments, it does

[40] *Journal*, VII, 392-401.

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not appear by what logic they should have a monopoly of the formulation of policies in this regard, any more than in purely domestic matters.[41] Already as regards two fields of vital importance to the Dominions—the implications of the Imperial connection and of League membership—there have been so many opportunities for discussion, and such ardent debates, that one may draw some inferences as to the conditions of their effectiveness. The constitutional principles embodied in the Balfour report of 1926 and in those of the two most recent Conferences, also the coöperationist-isolationist alignment in foreign affairs, have been worked out through many years of controversy. One may follow the development of a somewhat confused background of conflicting viewpoints and relate governmental action thereto. That the results have not been more tangible heretofore must be attributed to the complexity of the issues and the inadequacy of the participants. On the whole, the conclusions which the governments have drawn have been as to the limits which they might not overstep, rather than as to the positive moves that they should make.

For instance, all must now be "autonomists," and vie in the glorification of "Dominion status." But the implications of that status are so vague that governments have a fairly free hand in interpreting them. Whether the measures contemplated tend to integration or to decentralization, to active cooperation among the British nations and with the League or to isolation—whether they be the policies of Borden and Smuts or of Mackenzie King and Hertzog—all are justified as inevitable next steps in the enhancement of Dominion prestige. In fact, the whole evolution of Dominion relationships to the Commonwealth and to foreign nations has been characterized by the exercise of a surprising degree of discretion on the part

[41] For instance, the major issue of resuming diplomatic relations with the Soviet Union was several times discussed in the British Parliament following the accession of the present Labor government, and Premier MacDonald promised "that any conclusion that His Majesty's government may come to regarding recognition cannot become effective until it has been debated in this House;" *ibid.*, X, 790 (July 11, 1929). *Cf.* debates of November 5 and December 18, *ibid.*, XI, 8-15.

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of the governments. The great precedents in external relations have, in general, been created by the governments on their own initiative, unavailingly denounced or depreciated by the oppositions, and merely acquiesced in by parliaments and electorates. As a rule, the innovations were arranged by correspondence with the home government or by conference (although for a time, recently, recourse to the ultimatum method became strikingly frequent), and were reported back to the parliaments as *faits accomplis*. Opinion was too divided to permit of action more tangible than rhetoric, under the circumstances; and in most of the cases it is quite conceivable (in some of them it is certain) that under other leadership a diametrically opposite policy might have been pursued with equal success.

The circumstances under which these precedents were adopted may be noted briefly. Sir Wilfrid Laurier authorized the sending of a Canadian expeditionary force to the South African War in anticipation of parliamentary sanction, but with great hesitancy and in deference to strenuous popular demand.[42] Again in 1907, on his own initiative, he secured the addition of the Canadian emissary's signature to a commercial treaty with France,[43] and dispatched Hon. Rodolphe Lemieux to Tokio to negotiate a "gentleman's agreement" on the immigration issue.[44] There were several inconclusive precedents for the former, and a declaration by Laurier in 1903 which pointed in that direction;[45] but the latter was unquestionably a serious step toward independent Dominion diplomacy—so much so that, when challenged in the House, Laurier carefully avoided any precise explanation of the envoy's status. Less conspicuous, but more serious, were the precedents created by his nega-

[42] See Canada, *Commons Debates* (1900), cols. 10-136, 1793-1876; (1901), cols. 1290-1366; and *Can. Ann. Rev.* (1902).

[43] For discussions of this move, see Canada, *Commons Debates* (1907-8), cols. 3493ff., 3636ff., 4317ff.

[44] *Ibid.*, cols. 1585ff.; *Can. Ann. Rev.* (1907), pp. 380-98.

[45] Canada, *Commons Debates* (1903), col. 14817; during the post mortem on the Alaska boundary award.

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tive responses to imperialist overtures; for by these he gave an interpretation to his policy of "local autonomy," of which the report of 1926 was the logical culmination. In contrast, Sir Robert Borden's acceptance of Canadian representation on the Committee of Imperial Defense, and later of membership in the Imperial War Cabinet—like his insistence on Dominion ratification of the peace treaties—was in pursuance of specific declarations of policy while in opposition.[46] But the negotiations leading to the separate status given the Dominions at the Peace Conference were carried through on his own and his colleagues' responsibility.[47] Nor were the other premiers who joined him in these developments armed with specific expressions of parliamentary opinion.[48] The crucial features of Dominion external status were evolved without this assistance. Acceptance of the mandates, however, had a solid background of Dominion expansionism.[49]

General Smuts' insistence that the Dominions be accorded specific invitations to the Washington Arms Conference was quite in keeping with the political situation in South Africa. Though somewhat in advance of the Paris precedent, it had been discussed in principle during the ratification debates, and was endorsed by all the premiers save Mr. Massey.[50] The Halibut Treaty precedent, i.e., the refusal to allow Sir Auckland Geddes to sign in addition to the Canadian plenipotentiary—the most daring breach of Imperial diplomatic unity thus far—was apparently a *coup d'état* engineered through an unexpected dispatch to the Colonial Office and British ambassador on February 28, 1923, when the adjournment of the

[46] See Keith, *Selected Speeches and Documents*, Vol. II, pp. 310-312.

[47] Canada, *Sessional Papers* (1919 special session), no. 41j; *Can. Ann. Rev.* (1919), pp. 70-86.

[48] See comment in *Round Table*, VIII, 207-208; IX, 603-604, 610, 818-819; X, 183-184.

[49] For the earlier phase, see 1907 Conference *Proceedings*, Cd. 3523, pp. 548-563; on the German colonies issue, see *Can. Ann. Rev.* (1916), pp. 160, 183 (1918), pp. 168-169; *Round Table*, IX (articles from Australia and New Zealand, *passim*).

[50] *Journal*, III, 877, 881, 907-908; IV, 590-591; *Can. Ann. Rev.* (1921), pp. 79-80, 116.

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United States Senate was already imminent.[51] This step evoked varied expressions of opinion in all parliaments. It, and probably also the Canadian government's attitude toward the Lausanne treaties, was the basis of the 1923 Imperial Conference resolution which so thoroughly decentralized the conduct of negotiations.[52] The principle of optional adhesion embodied for the Dominions in Article 9 of the Locarno Pact represents the application to political treaties of a practice long established as regards Imperial commercial treaties. In no Dominion, however, was there adequate discussion of invoking it in this case, the premiers merely informing their parliaments that the negotiations were proceeding, on the assumption that it would be adopted.[53] Canadian diplomatic representation at Washington was debated in principle for many years.[54] It was authorized under Conservative and established under Liberal auspices; yet the actual basis of representation, which differed radically in the two cases,[55] had not been a subject of antecedent parliamentary discussion. The action of the Canadian government in the case of the U.S.S.R. (March 24, 1924), by which the Dominion right of independently recognizing foreign governments was as-

[51] Canada, *Sessional Papers* (1923), no. 111a; *Journal*, IV, 300-303, 801-814; Lowell and Hall, *British Commonwealth*, pp. 639-645.

[52] Cmd. 1987, pp. 13-15; Corbett and Smith, *op. cit.*, Appendix I. It would be difficult to find any parliamentary mandate for this pronouncement.

[53] *Journal*, VI, 519, 723; VII 152, 328-329.

[54] Yet the actual announcement in 1920 came as a surprise; the premier declined to present the papers; and a motion for delay pending further information was lost by only five votes. *Ibid.*, I, 476ff.

[55] Compare the basis announced May 10, 1920 (*ibid.*, 476-477), with that of the Free State ministry (Cmd. 2202), or Mr. Massey's letter of credence (Corbett and Smith, *op. cit.*, Appendix IV). The Free State principle actually adopted by Canada is that of a distinct legation; hence is applicable to all Dominions and any foreign capital. The Canadian Conservative proposal was intended to meet the special needs of Canada in Washington only; the minister, though responsible to his own government, would have been a member of the British embassy, acting *vice* the ambassador in the latter's absence. This peculiar arrangement was designed to preserve Imperial diplomatic unity, while the other implies complete decentralization.

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serted, followed the evasion of a question upon the subject in the House four days previously.[56] So also another important precedent, the acceptance by Canada in 1927 of a non-permanent seat on the League Council, was without prior consultation of parliament.[57]

Thus, none of these precedents (in the creation of which, it will be noted, Canada has played the predominant rôle) were the sequels of specific consultation with parliament, even where they were the logical results of declared policies, or at least where parliamentary viewpoints had been broadly expressed; and some of them were simply bolts from the blue. The same, in general, holds true of the other major episodes in Dominion foreign relations. The reciprocity issue (1910-11) was exhaustively debated in Canada, and two definite policies were aligned.[58] The renewal of the Anglo-Japanese alliance was specifically argued in all parliaments during 1921.[59] In Australia and New Zealand, the debates offer a striking instance of prior consultation with parliament; but in Canada, there was much less discussion and elucidation of official viewpoints than the influence which that Dominion was bound to exert on the outcome would seem to have demanded.[60] The same is true regarding the Singapore naval base, so consistently agitated in the Pacific Dominions.[61] Noteworthy among specific antecedent debates more recently have been those in Canada on the Tokio legation,[62] acceptance of the optional clause of the World Court Statute,[63] the St. Law-

[56] *Ibid.*, V, 341, 747.

[57] See Toynbee, *Conduct of British Empire Foreign Relations*, p. 60; and for the implications, Corbett and Smith, *op. cit.*, pp. 125-129.

[58] See *Canadian Annual Review* for these years; and for background, *Industrial Canada*, organ of the Canadian Manufacturers' Association.

[59] *Journal*, II, 537ff., 609ff., 635ff., 856ff.; III 89ff., 149ff., 556. The principle embodied in the Four-Power Pact was broached in several of these discussions.

[60] See adverse comment in *Round Table*, XI, 910-913.

[61] E.g., *Journal*, IV, 512; V, 345.

[62] In supply (June 11, 1928); *ibid.*, IX, 660-666.

[63] On private members' motions (April 11, 1928 and 1929); *ibid.*, 667-668, X, 596-600.

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rence waterway project[64] and the Chicago drainage canal issue,[65] and in the Free State on the Peace Pact;[66] but these were not held on government initiative. There is a general background of discussion for such questions as disarmament and the renunciation of war. As regards three of the principal recent issues—the Anglo-Egyptian treaty, resumption of diplomatic relations with Soviet Russia, and acceptance of the Optional Clause—the problem of parliamentary control was complicated by the desire to reach a consensus of all the British governments before any public commitments were made. Hence, despite volleys of questions, the parliaments were kept virtually uninformed as to what was actually transpiring.[67]

The cases in which parliaments have been kept in the dark as to important developments have been numerous and serious. Needless to say, the instances cited thus far of defective parliamentary control in other respects also exemplify lack of prior consultation on the part of the governments. The striking extent to which oppositions rely on press reports as starting-points for debate is an index of the general situation. In fact, their normal state seems to be one of genuine apprehension of unforewarned developments. Mr. Meighen evidently feared Canadian acceptance of the Geneva Protocol when he criticized omission of any reference to the issue from the governor-general's speech at the opening of the session.[68] In New

[64] On a private member's motions (April 11, 1928 and February 21, 1929); *ibid.*, X, 46-50, 324-327.

[65] On a motion for papers (February 16, 1928); *ibid.*, IX, 406-409.

[66] On De Valera's motion for adjournment (May 31, 1928); *ibid.*, 765-768.

[67] For instance, claiming that parliament was wholly in the dark as to the government's intentions, and also in the belief that by their insistence on reservations Australia and New Zealand were blocking acceptance of the Optional Clause by the British nations, Mr. Holland forced the issue on a motion for adjournment in the New Zealand House (September 19, 1929). While Premier Ward was pleading the bar of secrecy upon him, the evening papers announcing signature arrived in the House; *ibid.*, XI, 411-414.

[68] *Ibid.*, VI, 304-306 (February 9, 1925). The premier's reply was that, as the issue was still pending, no reference had been made to it in the Speech—an excellent illustration of the contrasting status of domestic and external government projects in relation to parliament.

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Zealand, Mr. Holland (Labor), realizing the partisan factors involved, anticipated that just as the Protocol had been rejected, so the competing principle of the Locarno Pact would be accepted—without reference to parliament.[69] Senator Sir George Foster was plainly worried by rumors that the Canadian government had been approached regarding membership in the Pan-American Union, and in moving for any correspondence in the matter, gave warning of the grave implications that such a new departure would entail.[70] A fortnight before prorogation in 1922, and without consulting parliament, Premier King departed for Washington to attend to various negotiations, including (so a press interview stated) that of a Canadian substitute for the Rush-Bagot Convention.[71] The device of postponing action until after the close of the legislative session is familiar in the Dominions as in the United States,[72] and the parliamentary system can lend itself to a distribution of business which leaves insufficient time for discussion of external affairs.[73]

III

Probably the most striking feature that appears on the face of this record of practices in the Dominions is the relatively far greater measure of discretion assumed by the governments in the conduct of external affairs than is accorded them

[69] *Ibid.*, 848 (July 1, 1925); VII, 864 (June 23, 1926).

[70] *Ibid.*, VIII, 579-581 (March 11, 1927).

[71] *Ibid.*, IV, 284-285; *Can. Ann. Rev.* (1922), pp. 96-98.

[72] E.g., Laurier's reply to Colonial Secretary Lyttelton's imperial federation proposal in 1905 (Cd. 2785, no. 14), and King's to the first MacDonald government's suggestion of a conference on Imperial foreign relations in 1924 (Cmd. 2301, no. 3, and *Journal*, V, 749).

[73] E.g., South Africa: Dr. Malan's protest (June 23, 1923) that the discussion of the forthcoming Imperial Conference which he had demanded had been left until the last day of the session (*Journal*, IV, 900). Canada: J. S. Woodsworth's complaint (March 22, 1926) that in the previous session the promised discussion of foreign relations had been postponed until after midnight on the final sitting (*ibid.*, VII, 777-778). New Zealand: protest of leaders of both oppositions (December 3, 1927) that the debate on the 1926 Conference findings had been so long delayed (*ibid.*, IX, 459, 464).

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in domestic matters. There has been an obvious difference in the status of the two types of issues. In consequence, the evolution of the constitutional status and international relationships of the Dominions has, on the whole, been distinctly the work of the governments, not the parliaments. It is true that, on more leisurely analysis of this evolution, one is also impressed with the steady and effective, if less palpable, conditioning of governmental action by parliamentary criticism. Yet one need not be an evangelical protagonist of democracy to disparage a situation which has permitted the rendering of some of the most fateful decisions in the history of the Dominions with an arbitrariness that would be politically reckless in the case of tariff or transportation issues. As for the theory that the conduct of foreign relations belongs inherently to the executive—which clearly has been an important factor in the acceptance of this situation—that would seem to be a relic of a dynastic era which lost whatever theoretical plausibility it had with the passing of the institutional basis from which it was deduced, and which cannot hold water amid the complexity and interdependence of modern society and the ramifications of our major political issues. Instead of being a matter of logical distinction, the real question is that of the extent to which practical obstacles hinder the assimilation of parliamentary control in external to that in internal relationships. Actually, it is but a phase of the wider problem of the limitations of representative government.

Noteworthy among these practical hindrances is the fact that the level of parliamentary debate on external affairs has been, in general, much lower in the Dominions than in either British house—less informed, too, than on domestic issues. Never in any parliament, it seems, has there been any considerable body of members qualified to bring constructive criticism to bear on governmental action. The result was inevitable. Allied to this has been the conflict and confusion of opinion upon each episode as it arose, the complexity of the issues, and the preponderance, politically, of domestic concerns—factors well exploited by the governments, but none of them apparently ir-

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remediable. Indeed, a change for the better seems already under way. While the controversy over Dominion status within the Commonwealth was boiling, parliamentary interest in Dominion external affairs increased markedly. But, owing to the prevailing obscurity in both the intra-imperial and international situations, it proved too inchoate to impose very effective limitations on cabinet discretion—with the results already indicated. More recent developments, however, have tended to lessen this obscurity, and so to enhance the significance of debate. Unquestionably, the principles laid down in the constitutional settlement of 1926 have done much to clarify the intra-imperial aspect of Dominion relationships.[74] They have afforded standards for criticism of governmental action not previously available. So too, international problems have at least become more concrete and amenable to parliamentary discussion; while at the same time, not merely the fact that a *modus vivendi* within the Commonwealth has been reached, but the actual basis fixed, seems calculated to divert attention to and enhance interest in Dominion foreign affairs. For these reasons, parliamentary pressure upon governments should henceforth be more discerning and effective.

The character of the discussions themselves appears to justify these inferences. The relative attention given foreign relations in the more formal proceedings, as well as in the debates on the Address and in the question hour, has been gaining steadily. There also seems to be less irrelevant apostrophe to nationalism and "equal status," and more serious consideration of how foreign countries stand on issues affecting the Dominions. There has been a correlative change in the attitude of the governments. In the light of what, before the war, were radical contentions, or mere sporadic protests from the opposition, there has been a noteworthy, if gradual, ex-

[74] The effect of the Balfour memorandum from the strictly legal standpoint is, however, another matter. (*Cf.* Keith, *Sovereignty of the British Dominions*). The word "settlement" is here used advisedly, despite the seeming intensification of constitutional discussion during the ensuing years. The latter has been concentrated on very concrete issues, i.e., the corollaries still to be worked out; whereas the earlier controversy was over vaguer, yet more fundamental, general principles.

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tension of parliamentary participation in foreign affairs. Within the past few years, the theory that external relations should be a government monopoly has been definitely abandoned; and apparently the view that internal and external affairs should be on different planes as regards parliament is fast disintegrating. Certainly the governments, in place of their erstwhile frank aloofness,[75] are now careful to appear desirous of taking the parliaments into their confidence.[76] This latter, and the fact that demands for discussion of pending issues have become so usual, would seem to indicate an atmosphere favorable to the development of a convention requiring consultation prior to decision. Limitations on the freedom of governments to create precedents at their own discretion in the future appear to be accumulating.

Needless to say, the chief factor in this progress has not been governmental initiative. Nor has it been the vindication of any academic doctrine, although no doubt the popular derogation of "secret diplomacy" and the fillip to democratic theory in Europe following the war played their part. It represents the cumulative effect of many protests from the "outs;" it is a tribute to the real effectiveness of opposition insistence. The utility of private members' questions and motions for papers can hardly be appraised statistically. As in judging the political significance of judicial review in this country, the importance of some negative decisions may outweigh even habitual complacency toward the legislature. Governments seldom hesitate to plead the public interest, or the intransigence of other governments, in face of really embarrassing inquiries. Nevertheless, from a study of the circumstances under which the various parliamentary discussions

[75] Notably under Laurier in Canada, Hughes in Australia, and Massey in New Zealand.

[76] Perhaps the most striking modification was in Australia under Bruce (e.g., his voluntary statements to the House on the Anglo-Egyptian treaty, March 8, 1928, and August 22, 1929, and on the Peace Pact, May 15 and June 1, 1928). But in Canada also, as the King government became more firmly seated and the issue of constitutional status untangled itself (and probably also owing to parliamentary criticism of the arbitrary course pursued in 1922-24), a change was observable.

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have arisen, the present writer inclines to think that the value of these devices is much greater than is usually supposed. Opposition questions have evoked probably as many important statements of policy and pledges to parliament as have the inspired queries from the government side. Motions for papers appear to have afforded excellent opportunities for criticism and advice, or the elucidation of conflicting viewpoints, before governments have definitely committed themselves. The ultimate importance of debates on motions for adjournment is by no means negligible.

This does not imply that opposition influence can be traced immediately on the face of the record. Apparently, its chief effectiveness can be inferred only from the conduct of the governments themselves; for Dominion politics has been relatively stable, and governments have a habit of remaining long in office. Contemporary critics of the British parliamentary system probably err in underestimating this indirect opposition influence. It is usual to stress the rigidity of party lines in legislatures, and to reiterate that debates do not affect votes. True, if the sole aim of parliamentary activity were to augment or obliterate government majorities, then the talk might well be dispensed with, along with the theory that their modes of reaching decisions are less esoteric than those of an independently elected chief executive. But surely there is a broader and more useful purpose than can be measured immediately on the division lists. There is the elucidation of issues through discussion, the expression of diverse points of view, the representation of interests other than those actually in the saddle —the offering, in short, of a wide variety of instruction to the government which has an undoubted if imponderable influence in shaping policies, and is a really vital element in representative democracy.[77]

[77] Herein lies ample justification for the "academic debate"—which is commonly resorted to several times in a session in Canada, but less frequently in the other Dominions—and probably also the explanation of why it attracts the serious attention of parliamentary leaders, including premiers and leaders of the opposition. It affords excellent opportunity for the analysis of issues (the more so because

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The situation in the Dominion parliaments, then, is that if a member has anything pertinent to say upon external policies, he need not lack opportunity during the session of expressing himself; but whether his observations will actually affect governmental action is another matter. Thus, in view of the measure of clarification in the general situation, the growing interest in and comprehension of external problems, and the changed attitude of the governments, the prospect indicates increased parliamentary activity in the formulation of general lines of policy. As regards specific pending issues, however, the information at the disposal of the members is perforce inadequate, and as a rule decisions are rendered upon the sole responsibility of the governments. In the past, this assumption of untrammelled authority has extended to policy-determining of major importance. But for a variety of reasons, the field of governmental discretion may be expected to undergo a measure of restriction in the future. In this connection, it is suggested as a desirable convention that governments should submit for parliamentary approval, not merely policies which call for positive action on their part, but their negative decisions as well. Moreover, the practice of holding formal debates upon major pending issues—as was done, for instance, in Australia and New Zealand regarding renewal of the Anglo-Japanese alliance in 1921—serves several useful purposes, and is susceptible of much more extensive application than heretofore. On the whole, it seems to the present writer that the British Dominions have been working out a compromise between deliberation and action in the conduct of external relations which is the more noteworthy in that the entire principle of representative parliamentary democracy is undergoing crucial reëxamination in so many countries today.

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the fate of the government is not at stake), and has provoked some most enlightening discussions. The proposition is introduced by a private member's motion, is debated, and is as likely as not withdrawn after thus serving its purpose. A salient recent instance is Miss Macphail's motion in the Canadian House (March 26, 1928) to establish a government department for the promotion of peace and international understanding, which was made the occasion for a survey, at two sittings, of the country's foreign relations (*Journal*, IX, 393-401).

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THE MEASUREMENT OF PUBLIC OPINION

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Since the last decade has witnessed an unparalleled outlay of energy in discussing public opinion, and in inventing devices intended to add precision to the discussion, it is not untimely to take stock of our present position in the matter. If this paper can be said to support a single thesis, it is that the problem of measurement can be considered most profitably in relation to a set of nuclear concepts about public opinion. To measure is to render more precise; measuring efforts which undertake to render faulty concepts more precise are foreordained to be more precisely faulty. I shall begin by passing certain general conceptions in review, and we shall see whether the upshot warrants us in believing that we shall thereby achieve a sounder view of the measurement problem.

Political changes come to pass by unreflecting innovation, by private planning and adjustment, and by acts which involve the attention of many people at some stage of their elaboration. Much of the etiquette of public administration has come into being without anyone taking thought of it. Much has been devised by a single person, who quietly transmitted his innovation to a limited circle, and ensured its permanence. But some of the features of political life have a more extended history. Men have argued, and even bled, for national independence, for the extension of the franchise, for the devolution of authority, for the qualified independence of the judiciary. These patterns are the current residue of past conflict. They are the outcome of that form of social change which at some stage involves the participation of many people; that is to say, they are the result of *political movements*. Contemporary political science has displayed an increasing interest in political changes which involve political movements rather than thoughtless innovation or private ingenuity. This trend of interest is rather ambiguously called a renewed interest in pub-

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lic opinion—a term which, as we shall see, requires more adequate definition.

Political movements are of various kinds. When a revolting offense is committed against the moral code of the community, instant and concerted action may be taken against the offender; and if the law has not penalized this particular offense, it will be modified at once and without debate. This political movement is of the most simple type, proceeding smoothly from outraged sentiments to decisive action. The solution of the situation is pre-organized. With this simple political movement, we may contrast one which moves through a more complicated course. Those who find their markets suffering from the competition of foreign goods may demand protective tariffs. Those who want to keep their costs of production and consumption down may oppose any interference with the competitive market. Others who fear for the supplies of the country in war, but who believe that tariffs multiply points of friction, may propose subsidy rather than tariff. Numerous other contradictory, supplementary, or corroborative demands may be made. Arguments may fly, pro and con, and finally a decision is made by a peaceful balloting procedure; and discussion dies off. We may say that the complex political movement originated in unrest, passed through a phase of symbolization and discussion, and proceeded through enactment to a relatively permanent change in the political pattern.

All degrees of variation may be found between the simple and the complex movement. This formal method of analysis enables us to place a particular movement in relation to others, and to state certain general problems for investigation. Although political movements begin in unrest, all social unrest does not find expression in political movements. Under some conditions, a community which is visited by a plague may pray; under other conditions, the community will demand the retirement of the health commissioner. We have here a very profound problem for research. What are the factors which dispose the community to settle its difficulties by ceremony,

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or to seek to settle them by modifying the social or physical environment?

It is also worth pointing out that some unrest is dissipated in the very process of becoming symbolized in political form—which is the well-known catharsis function of free expression. Some of the unrest is dissipated in symbolization and in enactment, even though no effective change is made in social practice. Those demands which die with enactment are essentially magical in their character, since they dissipate discontent by hocus-pocus rather than by modifications in the social or physical environment. I have elsewhere suggested that the discrepancy between statutes, ordinances, or decrees, on the one hand, and actual enforcement and obedience, on the other hand, would serve as a rough index of the magical function of politics.[1]

We must allow for the fact that some demands will not subside until long experimentation with particular legislative and administrative arrangements arrives at some stable solution. We must recognize also that discussion may be broken off, and issue joined by battle rather than by ballot.

We are now in a position to undertake to clarify the meaning to be attached to the term which is so often and so vaguely employed, i.e., *public opinion*. It is used to refer to that phase of a complex political movement which is characterized by debatable demands for action. It is essential for the concept of public opinion that one recognize that differences are pertinent only when they involve antagonisms.[2] I have endeavored to convey more than mere difference by speaking of *demands*. No less fundamental for the concept is the idea of demands whose fate is to be subjected to discussion and to some deciding procedure short of coercion. The demands are debatable. Those who participate in the process are the public. The public may be defined for a particular issue, or for a cluster of issues, and for time periods of varying duration. The Chicago

[1] *Psychopathology and Politics*, p. 195.

[2] Gerhard Münzer, *Öffentliche Meinung u. Presse* (Karlsruhe, 1928).

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public of the last decade has been composed of those who made debatable demands about Chicago government.

How are we going to measure a public? In particular, how are we going to measure the Chicago public? One of our first tasks is the delimitation of the time period to be investigated. If we study a two-weeks' period during a dull time of year, our public will be numerically and geographically smaller than if we study a decade full of dramatic controversies. After our time interval is selected (and the selection is essentially arbitrary), we must choose our minimum criteria of participation. Voting is one type of participation. Shall we include within the public those who have cast one ballot within the period, or shall we specify a higher frequency? Contributing funds to pressure organizations is a type of participation. Shall we include within the Chicago public the man from Texas who once sent five dollars to a reform organization in Chicago? And which criteria of participation shall we take? If doing anything to influence the outcome of debated demands for political action in Chicago is what is meant by participation, we shall have to consider the case of the Kentucky editor who hopes that his stinging editorial will be copied in Chicago, and that it will shame the metropolis into electing upright men to office. Since participation involves not only the total numbers who participate, but the intensity of their participation, we must decide how to weigh so much voting against so much expenditure of money and time. One possibility would be to translate time spent into potential earning power, and include voting, canvassing, speaking, attending committee and mass meetings, and the like, in the time account.

Another set of problems arises in considering the applicability of certain indirect criteria of participation. Does the fact that one reads political news from Chicago make one a member of the Chicago public? Are we justified in inferring that he who reads about pending matters wants to influence the outcome? Or are we justified in supposing that many people who read about Chicago do nothing to influence the

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course of events there? If we adopt the former alternative, we shall have to include within the Chicago public everybody from Peiping to Tangier who reads a certain specified amount of Chicago news.

I should like to suggest that it is a matter of interest to students of government that news about Chicago, Berlin, Moscow, Paris, London, and New York is read almost everywhere in the world. But reports which are read with idle curiosity for sheer diversion do not mark the reader as a member of the public of any one of these centers. The term "participation" is drawn too fine if we apply it in that connection. We mean by participation an active attitude toward the outcome of debatable alternatives of action. As empirical investigation continues, we will find it convenient to specify the minimum amount of outlay (money, and time in terms of money) necessary to warrant inclusion within the public.

We need a term to include all those who pay attention to the course of events related to a specified political situation, whether or not they belong to the public. I propose that we speak of the *attention group*. We need to study the attention groups of the world closely, since they are often precursors of more complicated forms of social interaction. The attention group of a city like Chicago must, like the public, be defined for a specific time interval. We should like to measure the time spent reading news of Chicago, listening to Chicago radio material, looking at pictures and plays about Chicago, reading books about Chicago, attending lectures about Chicago, talking to people about Chicago, living in Chicago, dealing with people or objects from Chicago. We need to evaluate many of the more obvious indices from this time standpoint. A newspaper printed in Chicago and circulating in the country may be read by an average of two persons for half an hour a day apiece; a newspaper printed in Constantinople and circulating in the country may be read and heard by scores of people, so long as the practice of declaiming the contents of the newspaper continues.

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The relationship of the public to the attention group has been indicated. There remains the task of designating the connection between the public and the *sentiment group,* which is composed of those who are emotionally identified through a collective symbol, like nationalists, patriots, proletarians, and partisans. Identification involves the inclusion of a symbol of the other into the personality of an individual. Identification can occur with respect to those who are spatially remote through the perception of a common relation to an inclusive symbol, like a flag emblem, or a name. Speaking very generally, it may be said that the public operates within the limits of a sentiment group. The presence of discussable differences implies the presence of agreement on the procedure of discussion, and upon the criteria to be applied in debate. Public opinion proceeds within a framework of the non-debatable, which is what President Lowell meant by stressing the constitutional consensus as antecedent to public opinion. Demands are debatable so long as they do not transgress the moral consensus; when they do, the public dissolves, debate ceases, intolerance begins, and joint coercion is in readiness. The *crowd* is composed of those who are actively intolerant of dissent.

A political group acts both as a crowd and as a public. It may act as a crowd in respect of a foreign oppressor or a foreign rival; it may act as a public in considering the ways and means of acting against them. A group may burst asunder into two or more conflicting crowds, as when sectarians would emigrate to avoid contamination from the world around, or when revolutionary or secessionist movements are in full career. Those are members of a crowd who actively indulge in acts of intolerance, or in encouraging such acts. It is possible to measure the number of those who spend various amounts of time using coercion, encouraging intolerance, or contributing to the support of such measures.

Attention groups, sentiment groups, crowds, and publics have their geographical aspects. We may properly speak of attention areas, sentiment areas, crowd areas, and public

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areas; and we may profitably explore their interrelationships. One of the general questions at issue is at what level of activity the attention area passes rapidly into another type of area.

We have, too, the problem of relating these various psychological areas to such organization areas as states, provinces, municipalities, special administrative, judicial, and electoral districts. Many political problems appear where serious discrepancies exist between these psychological areas and various organization areas. This is very manifest in the case of national minorities within a state of alien sentiment. And within the same national sentiment area, problems arise in adapting both control and administrative areas to differences in local feeling. This is the general significance of the complex of difficulties connected with home rule in the United States, devolution in Great Britain, and regionalism in France.

Political scientists have not been backward in criticizing governmental arrangements for their lack of consonance with psychological facts. But political scientists have not yet evolved and applied satisfactory criteria for the mapping of these psychological areas. Until that task is further along, our comments will continue to smack too much of simple impressionism. Perhaps the task will be facilitated by distinctly recognizing the existence of several types of psychological areas, each of which raises special problems of measurement.

Thus far, I have dwelt mainly on the problem of measuring one dimension, i.e., the extent, of the attention area, the public, and the crowd. There are, of course, other dimensions, and their measurement offers the most difficult task. We have not finished the description of the public when we have said that during a specified period so many people spent such and such an amount of time and money presenting and debating demands for political action in a particular community. We should want to describe the specific nature of the demands which could be debated, since we know that some demands could not be debated. We should want to describe the distribution of support for the different demands at successive stages

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of the political movement. We should like to describe this distribution, both in terms of direction (for and against) and in terms of intensity (stability of direction against resistance). And we should like to know how to enter a political situation, and to measure the dimensions of the public before particular movements are completed.

When the political manager is in the thick of political movements, he is interested in prophecy and control. He wants to know whether a particular candidate has a better chance in the autumn election than another, whether a specific referendum measure will succeed, whether an endorsement from the Bankers' Association will win more votes than it will alienate. His judgment of contingencies and his invention of expedients are governed by a unique and crucial event series. Every detail is interpreted by him in relation to the impending crisis of decision.

Such a point of view is alien to the scientific mind, which is preoccupied, not with prophecy, but with prediction. The scientist would like to describe a typical series of events and relate them to another typical series of events. His task is, not to intervene in May for the sake of prophesying what will happen in November, but to intervene in the initial stages of discussion, and to state that, the situation remaining constant, the public, when consulted, will divide along certain lines and adhere to the division with a certain intensity. The scientist adopts a formal, and not an impressionistic, procedure in marshalling and interpreting the signs which he collects; while the active political manager continually reëstimates the most diverse leaves that stir in the wind. It may be that the generalized relations discovered by the scientist will be useful to the political manager in making up his prophecies and modifying his *ad hoc* techniques of manipulation; but this is to be demonstrated and not assumed, for it may turn out that political managers who pay too much attention to the particular signs that are relied upon by the scientific generalizer will impair their own judgment by blunting their susceptibilities to other unique factors in the unfolding situation.

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The first idea which has come to those who want to measure the direction and intensity of public opinion is that of securing a consensus among estimators of the meaning of various data. We know, as a matter of common observation, that persons who participate in a universe of discourse attach certain implications for future action to the words which are uttered around them. If we hear two men who appear to have the same social standing engage in conversation about the League of Nations, and one of them declares that he is opposed to the League, lock, stock, and barrel, and the other responds that he, too, does not think so well of it, we at once place these bits of behavior in relation to other possible kinds of behavior. If asked to define our interpretation, we would say that both men would probably vote against joining the League on a referendum on the question of our adherence; that the first man would vote against joining, almost regardless of the arguments; that the second could possibly be moved by strong arguments to shift his position; that the first would probably donate to anti-League propaganda, while the second would donate nothing to propagandist organizations; and so on through a long inventory of possible reactions. In point of fact, we live in a world which we are continually estimating in this way, and the consensus procedure is but a refinement of this estimating process.

Suppose we work up a measuring stick in the way that Thurstone has done, which is by far the most elaborate procedure so far devised.[3] The selection of the statements and the solicitation of the estimates come at a definite time in relation to the development of the whole political movement. Are we subject to any sources of error if we apply the scale at various successive stages of the political act? Suppose the scale is constructed in May and the election is in November. Suppose the scale is constructed in 1925 and the referendum is in 1930. Are we justified in assuming that the words on the scale continue to have the same meaning which they had when the scale was made up?

[3] Thurstone and Chane, *The Measurement of Attitude.*

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The scale, once constructed, may be said to remain useful to the extent that the universe of meaning in which it is applied remains constant. Now any universe of meaning is always undergoing re-definition. Thus a new term of contempt, like "Kabitzer," may come into existence, perhaps weakening the amount of hostility implied in some of the epithets used in the scale. The original statements have lost the meaning which they signified at the time of the estimating, and would be resorted by the judges later on; indeed, different statements would be chosen for the sorting process.

How rapidly do universes of meaning change? Certainly this variability is no simple function of time; for doubtless it is related to the novelty of the issues involved and the intensity of interest excited. By working on the basis of Thurstone's procedure, we may discover some very fundamental laws of language; but we must be very careful, in applying his method (as he has himself pointed out), to allow for the fact that his yardstick becomes distorted in our hands.

By calling attention to the simple fact that our measuring procedure is used at a certain phase of the public opinion process, we have become more clearly aware of some of the problems involved in measurement. We have seen the relativity of the scale to the stability of the universe of meaning in which it is used.

I should like to draw out some further implications of this point. The estimates made at any given time are more or less consciously made with reference to certain definite future contingencies. We have already noticed how we interpret the meaning of words with reference to possible referenda, election campaigns, opportunities or appeals for propaganda effort, and the like. Under Thurstone's procedure, the judges are given no instructions as to the future crises with reference to which they are to use their judgment in estimating the significance of the statements which they are asked to sort into eleven piles. This means that the judges are left free to view the future as the future is actually viewed in the universe of

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meaning in which they participated at the time. At one time, a specific election, or a specific referendum, may be in prospect; at another time when a scale is constructed, elections may not be pending, and it may be uncertain which way the issues are to be formulated for decision. At different phases of the political movement, the situation will become re-defined in terms of the way in which the decisive crises are envisaged. It is well known that at an early phase of public opinion formation, there are all sorts of symbols competing with one another for the support of the populace. In the later phases of the movement, it is very common for the issue to be drawn between two overmastering alternatives. Thus "adherence with reservations," which at one stage of the opinion process may signify endorsement of a treaty, may later on come to mean the opposite. A scale which is set up on the basis of the cleavages envisaged early in the opinion movement may become less and less applicable to the situation.

The relativity of the scale to the implicitly envisaged future crisis is brought out clearly if the public tends to break up and to pass over into a crowd. If in the initial stages of the slavery controversy, estimates had been collected of the meaning to be attached to certain statements, these estimates would have been given on the assumption that issues were to be settled by voting. Later on, when antagonisms grew sharper, more and more people decided to fight, no matter what the outcome of voting on the extension of slavery in the West. Judges of the meaning of the statements would now have been compelled to envisage at the two extremes those who would fight, no matter how the voting went. If they had been restricted to the original statements, they would have been compelled to drop out statements near neutrality in order to give expression to their belief that statements toward the extremes signified greater intensities. We see that the relevance of the scale prepared when a harmonious solution of controversies is envisaged becomes less as the crisis becomes more serious.

It has already been said that the ideal of measurement is to

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intervene in the developing situation and to state the conditions of direction and intensity prevailing. Direction refers to commitment for or against; the definition of intensity is less simple. Suppose we say that we mean by intensity the stability of a response when exposed to stimuli. We would like to have a scaling procedure so devised that we could justifiably assert that opinions equidistant from zero in opposite directions will show the same variability when they are exposed to stimuli of the same intensity. If we had such a scale, we could describe, not only the directions of opinion, but relative resistance to propaganda.

Let us consider the meaning of the units along the Thurstone scale. Do they supply us with what we need? Can we say that opinions located at corresponding scale values on either side of zero will remain equally stable when exposed to stimuli of the same intensity and in the same relative directions? This scale is not offered to us as an intensity scale. But if the foregoing analysis of the mind of the estimator is correct, we can say that it is an effort to measure both direction and intensity. It has been suggested that the judge interprets statements in terms of their predictive value with reference to an implicit future crisis (or crises). This involves estimating the extremes of behavior (such as death rather than acquiescence in an unfavorable decision), and appraising the intermediary forms of behavior in terms of these extremes. The nature of this judgment is obscured because the judges are asked to work without clearly envisaging the numerous alternatives that are considered to be potential in the developing situation.

Regardless of whether it is intended to work as a measure of intensity, we may undertake to devise a method which will test it as such a measure. We would want a stimulus which we could be assured would have a constant value, whether applied to those whose opinions are located to the right or to the left of zero. Had we such a stimulus, we could apply it to corresponding positions, and conclude that variations in response were due to the varying stability of the opinions, rather than

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to the varying character of the stimulus. If Thurstone's scale values are measures of intensity, corresponding opinions on either side of zero would change the same amount. Let us say that the corresponding points 20 positive and 20 negative would both show a shift of thirty per cent when exposed to the standard stimulus. If the scale values are not measures of intensity, corresponding opinions on either side of zero would change variable amounts.

How can we find a stimulus which can be applied with equal intensity to both sides of the scale? Perhaps we could choose a stimulus and test it by seeing whether it produces the same amount of shift among those at zero when applied in opposite directions in matched groups. But we might be able to discover a stimulus word which could be applied in either direction without testing it in this way, and without raising a question in anyone's mind about the legitimacy of the procedure. We might follow the procedure devised some time ago by President Moore, when he employed "expert" and "majority" as terms which could be applied with the same intensity in opposite directions. We could take matched groups on the Thurstone scale, and tell them independently that a retake was necessary, casually adding that they might be interested in knowing that a majority had so far voted in favor of (or against) the project.

It might turn out that the scaling procedure would prove to be a very accurate measure of intensity. At any rate, it would be possible on the basis of experimentation of the type proposed to develop a correctional factor, treating the alignment based on the judges' estimate as highly provisional, subject to the experimental determination of the correction factor. The direction and intensity measure would then be based on a combination of estimate and demonstration. We would have an independent means of determining whether the judges estimated correctly.

Methods which rely on estimate are always open to the question of how they demonstrate their dependability. We have

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not yet successfully devised ways of measuring direction and intensity which finally substitute demonstration for estimate. We could move in that direction if we could elicit reactions which could be measured by methods which do not depend on a consensus of judgment that varies to some extent as the data vary.

For this purpose, we should like to have data which do not depend upon the conscious intent of the subject. The data used by Thurstone are commitments which are elicited from subjects who are fully aware that their opinions are being asked, who are able to deceive if they want to do so; their commitments are taken at their face value. It is possible to collect data on a different basis. Observers may be stationed at various places to listen to commitments which are being made, or to provoke commitments unobtrusively.[4] Observers may rely upon reactions which are not formal commitments, such as the amount of time spent reading material on different sides of a question where the choice is presumed to be free. Frequency per time unit, or number of time units, may be used to express the magnitude of the reaction observed. This may then be tested in terms of a standard stimulus type of procedure for the sake of discovering whether these scale values are dependable intensity measures.

Some types of data may be elicited with some coöperation from the subject which may be measured by an instrumentation procedure, and which can be rendered independent of the conscious intention of the subject. I refer here to the measurement of the variations in pulse, respiration, psycho-galvanic reflex, and similar reactions. Already, differential responses have been used for the purpose of detecting lies in practical police work. The precise limits upon the procedure will become apparent as the work of John Larson, Leonarde Keeler, and others progresses. Physical reactions of this kind have already been employed by the Sovkino for the sake of

[4] This involves the use of the procedures illustrated in Dorothy S. Thomas and associates, *Some New Techniques for Studying Social Behavior.*

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measuring the relative effectiveness of moving pictures. Groups which are representative of various audiences are used in the experiments. This shows not only how general scientific data can be accumulated, but also how those who are planning specific campaigns can rehearse their appeals in advance and reject the ineffective.

One productive line of experimentation will be in the application to matched groups of measuring methods of differing degrees of complexity. Perhaps we shall discover that a simple rank order arrangement, tested and corrected by a standard stimulus, will prove accurate enough for many purposes.

The foregoing remarks have had to do with the problems involved in making precise statements about the extent, direction, and intensity of public opinion. But suppose we ask ourselves how we can appraise the effect of public opinion itself upon the other processes of politics. We might approach this fundamental task by asking, first, whether public opinion was present or absent in connection with changes in policy, morals, and taste; and, if public opinion was present, what were its dimensions. Remembering that important changes in political and social patterns occur without involving the attention of many people, we are able to say that one index of the rôle of public opinion is whether specified social changes were the outcome of complex political movements, as defined at the outset of our discussion. A second indication of the rôle of public opinion is the extent to which group demands have been modified in the process of passing through public consideration. Demands which are championed in the initial phases of action often become curiously revised as they are adapted to the exigencies of public controversy. A third, and more difficult, question is the extent to which policies which are not directly exposed to public discussion are modified out of deference to considerations of how the public might act. One detail of this is how the public relations counsels influence the policy of the institutions with which they are connected. Do they, by acting on certain assumptions about public opinion, modify policy

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in the direction of the calculation of long run interests? How can we adequately express the delicate modulations of policy which are made from day to day on the basis of more or less elaborate impressions or samplings of signs that are taken to be public opinion? I think it is fair to say that on these very fundamental matters we are still groping our way about. I suggest that since working propagandists will look after many of the minutiæ of the processes of opinion measurement, university research might wisely be oriented more definitely toward the consideration of these more general questions.

Talking precisely about public opinion involves the measuring of extent, direction, intensity, and effect. I have said nothing so far about the measurement of the relative importance of the various factors which mold opinion. Just as the problem of assessing the effects of public opinion takes us to the heart of the problem of sovereignty, in the sense of political power and not of juridical authority, so does the problem of recording the factors which, through a definite period, have contributed to public opinion formation carry us to this basic preoccupation of a realistic political science. Perhaps the most difficult problem here is that of assessing the influence which manipulative skill itself has in opinion movement. It is fairly simple to find out how much propaganda was put out by definite groups. The appraisal of skill is not to be confused with success. Many skilled propaganda campaigns fall down from lack of facilities, and many bungled campaigns seem to succeed in spite of themselves. Skill is an inverse relation between effort and result.

It has been suggested in this paper that our measuring efforts should be constantly reconsidered in the light of our fundamental conceptions of public opinion. I have sought to indicate how certain general ways of thinking about public opinion would place some measuring tentatives in perspective, and show where effort has not thus far been directed successfully. The goal is precise statements about the extent, direction, intensity, effect, and formative factors in public opinion. How near we can come, no one can say.

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State Constitutional Development through Amendment, 1930. State activity in the amendment of constitutions seems to fluctuate between off-seasons in odd years and periods of expansion in even years. In 1927, when this annual survey was inaugurated, seven states were included. In 1928, attention was directed toward eighteen states. The number was reduced to five in 1929, only to swell to a new height of twenty-one in 1930. As heretofore, the constitutional changes are reviewed by states rather than by subject-matter, and the effect of each amendment upon earlier constitutional provisions is indicated. A word is said concerning the amendment process in each state surveyed.

Massachusetts. Commencing in 1935, and continuing every tenth year thereafter, a census of the inhabitants of each city and town is to be taken and a special enumeration made of the legal voters therein for the purpose of determining the representative districts for the ten-year period beginning with the first Wednesday in the fourth January following the special enumeration. Districts established in 1926 continue in effect until the first Wednesday in January, 1939. Provision is made for the division of towns of twelve thousand population and over into representative districts; but no precincts in such towns may be divided. In taking the census, the enumeration of legal voters must specify the number residing in each precinct of the town. Towns of less than twelve thousand inhabitants may not be divided into representative districts. County commissioners are authorized to create representative districts and to apportion representatives among them. The total number of representatives (240), senators (40), and councilors remains unchanged (new Articles 21 and 22 in substitution for old Articles 21 and 22).[1] It is necessary that constitutional amendments be approved by a majority of the Senate and by two-thirds of the House of Representatives in two successive legislatures, and by a majority of electors voting thereon at a popular election.

Rhode Island. Provisions for absentee-voting by persons in military service (Article 4 of the Amendments to the Constitution) is repealed, and a new provision (Article 21 of the Amendments to the Constitution) provides for absent voting for qualified electors under regulations to be provided by the state legislature.[2] With the concurrence of a

[1] Yes, 443,618; No, 152,119.
[2] Yes, 52,926; No, 16,366.

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majority of the members elected to each house of the GeneralAssembly, constitutional amendments are submitted to town and ward meetings. If approved by majority votes therein, they are submitted to general elections, at which three-fifths of the electors of the state who were present and voting at the town meetings must register their approval.

Maryland. The legislature is permitted to authorize deputies in the treasury department to sign, countersign, and grant warrants, and to sign, countersign, and issue checks for the withdrawal of funds from the treasury of the state.[3] Heretofore (Article 6, Sections 2 and 3), only the comptroller could perform these duties. After approval of three-fifths of the members of each house of the legislature, this change was adopted by a majority of the electors voting thereon in the general elections of November 4, 1930.

North Carolina. After being proposed by three-fifths of the members of each house of the General Assembly, and approved by a majority of the electors in the general election of November, 1930, an amendment was adopted providing for the issuance of war veterans' loan bonds.[4]

South Carolina. Provision is made, through amendment of Article 3, Section 9, for biennial instead of annual General Assemblies.[5] Also, Article 4, Section 16, is amended to permit the calling of special sessions of the senate.[6] Three amendments were adopted concerning taxation. The levy of the former annual tax, as provided in Article 10, Section 2, becomes biennial;[7] Article 10, Section 1, is amended to provide for the assessment and taxation of intangible property;[8] and Article 2, Section 4, Subdivisions "A" and "E," is amended concerning the payment of taxes prior to election as a prerequisite for voting.[9] Articles 7 and 8 have been changed to authorize counties and municipalities containing a population of not more than 65,000 inhabitants, according to the census of 1920, to combine and consolidate in one government under provisions prescribed by the General Assembly.[10] An exception is made to the constitutional requirement that no person shall hold two offices of honor or profit at the same time (Article 2, Section 2) so as to per-

[3] Yes, 110,312; No, 97,059.
[4] Yes, 186,184; No, 121,546.
[5] Yes, 6,963; No, 3,655.
[6] Yes, 4,979; No, 4,489.
[7] Yes, 5,279; No, 4,586.
[8] Yes, 5,150; No, 4,699.
[9] Yes, 4,334; No, 4,053.
[10] Yes, 4,410; No, 4,086.

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mit circuit judges to serve as supreme court judges when appointed.[11] The General Assembly may now change the manner of the selection of school trustees and determine their terms of office in special school districts (Article 11, Section 6).[12] Eleven amendments of a local nature, applicable only to certain counties, were adopted concerning municipal bond indebtedness, elections, and school districts. After being proposed by two-thirds of each house and approved by a majority of the electors in a general election, constitutional amendments must be again submitted to the General Assembly and receive a majority vote of each house.

Florida. The power to issue bonds, after approval by a majority of the votes cast in an election in which a majority of the freeholders who are qualified resident electors participate, is extended to counties, districts, and municipalities (Article 9, Section 6); but this extension does not apply to the refunding of bonds issued exclusively for the purpose of refunding bonds or the interest thereon.[13] A new provision, Section 12, is added to Article 9 to permit exemption from all taxation, for a period of fifteen years from the beginning of operation, of all industrial plants in specified industries which were established in the state on or after July 1, 1929.[14] No exemption is to extend beyond 1948. The constitutional provision prohibiting inheritance and income taxes (Article 9, Section 11) is amended to permit the assessment and collection of estate taxes if such taxes are ever levied by the government of the United States.[15] A single motor vehicle tax is imposed (Article 9, Section 13) in the form of a license fee for the operation of such vehicles.[16] Amendments must be proposed by three-fifths of the membership of each house and approved by a majority of the electors of the state.

Louisiana. Permission is granted for the exemption of new industries from taxation (Article 10, Section 22) by local governmental units for a period of five years, providing such action is approved through election processes.[17] A portion of the tax on gasoline and motor fuel is assigned to the construction of highways and bridges by the state highway

[11] Yes, 5,141; No, 3,288.
[12] Yes, 4,054; No, 3,867.
[13] Yes, 48,814; No, 7,461.
[14] Yes, 40,723; No, 14,342.
[15] Yes, 47,725; No, 8,380.
[16] Yes, 53,088; No, 8,033.
[17] Yes, 111,348; No, 7,948.

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commission with the consent of the state advisory board (Article 6, Section 22).[18] The board of levee commissioners of the Orleans Levee District is authorized to construct an aviation field on Lake Pontchartrain (Article 16, Section 7).[19] The public credit may not be pledged, nor may the state engage in business; and a bond issue of five million dollars is authorized for the construction of a new capitol (Article 4, Section 12).[20] School funds are to be raised by means of a poll tax to be paid directly to the parish school board (Article 12, Section 14), the interest on the proceeds of land heretofore or hereafter granted to the United States for the parish school board, and the interest on the proceeds of land and property granted by the United States for school purposes. A minimum amount of twelve dollars for each child of school age is fixed, to be realized from designated sources.[21] A revised pension system for Confederate veterans is adopted, raising the maximum from thirty dollars to sixty dollars per month (Article 18, Sections 2 and 3), without regard to other income, and for wives of Confederate veterans whose marriages were contracted prior to December 1, 1905, and who were bona fide residents of the state for five years immediately preceding their application for a pension. Such pensions to widows cease upon remarriage. A tax of three-fourths of a mill, or as much thereof as may be necessary, is authorized to meet expenses of bond issues or interest payments necessary for the raising of funds to pay these pensions.[22] The motor fuel tax is increased from four cents a gallon (imposed in 1928) to five cents a gallon, to provide revenues for the benefit of public schools.[23] The board of liquidation (city debt) of New Orleans is authorized to issue bonds to the amount of $4,500,000 for the purpose of financing the construction of a new criminal court and a new parish prison. Whatever balance remains thereafter is to be devoted to the construction and renovation of public markets.[24] All of these amendments were proposed by two-thirds of the members of each house and approved by a majority of the electors voting thereon.

Minnesota. The legislature is authorized to prescribe and to limit the liability of stockholders in corporations, in consequence of an amend-

[18] Yes, 120,771; No, 6,004.
[19] Yes, 108,691; No, 9,864.
[20] Yes, 108,761; No, 7,761.
[21] Yes, 113,040; No, 6,569.
[22] Yes, 113,704; No, 6,592.
[23] Yes, 116,627; No, 7,085.
[24] Yes, 106,960; No, 10,779.

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ment to Article 10, Section 3,[25] which previously provided that stockholders, except those in manufacturing enterprises, were liable to the amount of stock held or owned by them. The number of judges of the state supreme court is increased from three to five (Article 6, Section 2),[26] and the two court commissioners previously appointed by the legislature are dropped. A new amendment to Article 8 provides for the exchange of public lands of the state for lands of the United States, as the legislature may provide.[27] A majority of each house of the legislature may propose amendments, which must be approved by a majority of the electors of the state.

Wisconsin. Following a proposal by a majority of each house of the legislature and approval by a majority of electors voting thereon, the governor is permitted to approve or veto items of appropriation bills (Article 5, Section 10).[28]

Illinois. Following proposal by two-thirds of the members of each house of the legislature, a majority of the electors approved a conservation bond issue.[29]

Ohio. Three-fifths of each house of the legislature favored the amendment of Article 12, Section 9, to the effect that not less than fifty per cent of the income and inheritance taxes collected by the state shall be returned to the county, school district, city, village, or township in which said tax originated, or to any of the same, as may be permitted by law.[30] A majority of the electors voting on this proposal concurred with the legislature.

North Dakota. Article 45, Section 104, provides for the election of district judges for a term of six years. The state is divided into not less than six judicial districts, in each of which are to be elected one or more judges. In the general election of 1932, a continuing and overlapping personnel is provided in districts having more than one judge by according to the one receiving the highest vote a tenure of six years, the one getting the next highest vote a term of four years, and the third judge (if any) a term of two years.[31] The judges of the supreme court are elected by qualified electors for a period of ten years, com-

[25] Yes, 486,818; No, 135,345.
[26] Yes, 428,013; No, 130,833.
[27] Yes, 378,716; No, 174,231.
[28] Yes, 252,655; No, 153,703.
[29] Yes, 886,971; No, 869,434.
[30] Yes, 930,914; No, 574,017.
[31] Yes, 83,635; No, 63,316.

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mencing with the judge obtaining the highest vote in 1934. The next highest at that election will serve for eight years, and the third highest for six years (Article 46, Section 90).[32] These changes were approved by a majority of the members of each house in two successive legislatures, and by a majority of the electors voting thereon.

South Dakota. Courts having jurisdiction to try offenses are authorized to suspend sentences, during good behavior, of persons convicted of crime for the first time, subject to conditions imposed by the court (Article 5).[33] The net proceeds of all fines for violations of law are to be paid into the school fund of the county in which the fine is imposed, instead of, as heretofore, into the school fund of any county (Article 8, Section 3).[34] Properties within school districts may be classified for purposes of taxation so that agricultural lands may bear a smaller proportion of the burden (Article 8, Section 15).[35] All state-owned land acquired under the provisions of the "rural credit act" may be taxed by local taxing districts for county, township, and school purposes (Article 11, Section 5).[36] After proposal by a majority of each house of the legislature, amendments must be approved by a majority of the electors voting thereon.

Nebraska. The individual liability of stockholders in banking corporations and institutions is fixed and collectible upon failure of such corporations and institutions (Article 12, Section 7).[37] Three-fifths of each house of the legislature concurring, this amendment was submitted in the November elections and approved by a majority of the electors voting thereon.

Utah. All tangible properties in the state which are not exempt under federal laws or the state constitution shall be taxed in proportion to their value (Article 13, Sections 2 and 3).[38] Vacancies that may occur in either house of the legislature are to be filled as provided by law, instead of under writs of election issued by the governor (Article 6, Section 13).[39] A state tax commission of four members, of whom only two may belong to any one party, is to be appointed by the governor with

[32] Yes, 75,009; No, 65,795.
[33] Yes, 81,697; No, 76,358.
[34] Yes, 88,092; No, 68,434.
[35] Yes, 81,870; No, 69,414.
[36] Yes, 101,527; No, 55,100.
[37] Yes, 182,536; No, 92,593.
[38] Yes, 66,678; No, 57,464.
[39] Yes, 82,027; No, 43,576.

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the consent of the senate. The functions of this body are to administer and supervise the tax laws, which duties were formerly imposed upon the state board of equalization. Each county is to be provided with a county board of equalization to adjust the valuations and assessments of real and personal property, subject to the control of the state tax commission (Article 13, Section 11).[40] All metalliferous mines and claims shall be assessed as the legislature may determine, instead of at the fixed rate of five dollars per acre as heretofore, provided that the basis and multiple now used in determining the value of mines for taxation purposes shall not be changed before January 1, 1935, nor thereafter until otherwise specifically provided by law. All other mines shall be assessed as tangible property (Article 13, Section 4).[41] The requirement that the state prison be located in Salt Lake county is deleted from a section requiring that the seat of government and the state fair be fixed at Salt Lake City (Article 19, Section 3). The institution for the deaf, dumb, and blind and the state reform school are assigned to Ogden City, and the Utah state hospital is to be situated at Provo City.[42] The proceeds of all lands granted to the state by the United States for the support of common schools, and all unclaimed shares and dividends of corporations, no longer need be apportioned among districts according to the high school attendance (Article 10, Section 3). The tax rate on tangible property may not exceed, on each dollar of valuation, 2.4 mills for general state purposes and .2 mills for high school purposes (Article 13, Section 7). Such funds are to be apportioned by legislative enactment.[43] These amendments, after approval by two-thirds of each house of the legislature, received the endorsement of a majority of the electors of the state.

Idaho. In order to bring the Idaho asylum at Blackfoot under the same control as other similar institutions, Article 10, Section 6, of the constitution was repealed. The effect of this is that instead of three directors for this institution, the governor, the secretary of state, and the attorney-general become responsible for the direction of affairs of the institution, and the governor appoints a warden, who in turn selects his subordinates with the approval of the board.[44] Two thirds of each

[40] Yes, 62,814; No, 58,021.
[41] Yes, 67,299; No, 56,023.
[42] Yes, 73,796; No, 47,536.
[43] Yes, 66,208; No, 55,791.
[44] Yes, 85,574; No, 14,716.

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branch of the legislature having submitted this amendment, it was adopted by a majority vote of the electors.

Nevada. The beginning of the fiscal year of the state is changed from January 1 to July 1 (Article 9, Section 1),[45] this proposal having twice passed the legislature by a majority vote of each house, and having been approved by a majority of the electors voting thereon.

Arizona. In the interest of uniformity, all elective officers of the state doing the same work shall have the same pay (Article 4, Section 17, part 2).[46] Persons voting upon bond issues must be real property taxpayers (Article 7, Section 13).[47] Citizens and wards of the United States only, with the exception of prisoners, may be employed on public works (Article 18, Section 10).[48] Before this amendment was proposed by a majority of the members of the two houses and adopted by the voters, persons who had filed a declaration of intention to become citizens were eligible for such employment.

California. The tax on street railways is increased from four to four and one-half per cent (Article 13, Section 14ab).[49] The legislature may establish retirement pensions for state employees and prescribe the requirements and conditions for retirement (Article 4, Section 22a).[50] The San Francisco harbor improvement act of 1929 is approved, with the sale of state bonds amounting to ten million dollars to provide funds for construction work and the improvement of the harbor. Tolls and other charges are to be paid into the fourth San Francisco seawall sinking fund (Article 16, Section 8).[51] Indemnification from public funds for livestock slaughtered to prevent the spread of contagious diseases may be authorized by the legislature (Article 4, Section 31a).[52] The Huntington Library and Art Gallery is permitted to receive gifts, and is exempted from taxation, subject to modification, suspension, or revival of this exemption by the legislature (Article 9, Section 15).[53] The legislature is empowered to provide for the organization and regulation of corporations, and to prescribe their

[45] Yes, 14,179; No, 6,811.
[46] Yes, 31,022; No, 20,168.
[47] Yes, 31,314; No, 20,867.
[48] Yes, 35,387; No, 18,560.
[49] Yes, 691,451; No, 363,155.
[50] Yes, 587,021; No, 550,565.
[51] Yes, 808,293; No, 257,700.
[52] Yes, 893,589; No, 184,922.
[53] Yes, 635,692; No, 407,645.

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powers, duties, and liabilities, and those of their officers. The extension of the terms of such corporations as are formed for a limited period is envisaged, but no franchises of a quasi-public corporation may be so extended (amends Sections 1 and 7 and repeals Sections 2, 3, 9, 11, 12, and 14 of Article 12).[54] Each ocean marine insurer is required to pay an annual state tax measured by the proportion which its gross premiums from business in California bear to its gross premiums from business in the United States, with exemption of such insurer from other taxes except the real property tax (Article 13, Section 18).[55] Justices of the supreme court and of the district courts of appeal, and judges of the superior and municipal courts, are declared ineligible to hold other public office while in judicial positions. Judges of the superior and municipal courts must resign their positions if elected or appointed to other public office during their terms. All justices and judges of courts of record are denied the privilege of practicing law while holding their positions (Article 6, Sections 18 and 22).[56] Proposed amendments to municipal charters must be submitted to the electors at special elections, and petitions for such submission must be filed with the legislative body of the municipality at least sixty days before such an election (Article 11, Section 8).[57] Previously, it was necessary only that the submission be completed during the six months preceding a regular legislative session, or thereafter, and before final adjournment thereof, and that petitions be filed sixty days before the general election necessary preceding such session. The residence qualification for voting in a precinct is increased from thirty to forty days; but persons removing within forty days of an election to a different precinct in the same county may vote in their former precinct. Absentee voting is permitted under legislative enactment in cases of physical disability (Article 2, Section 1).[58] All of these amendments received the necessary two-thirds support of each house of the legislature and a majority vote of the electors voting thereon.

Oregon. Interest payment by the state on irrigation and drainage districts is authorized, as also is the issuance of bonds therefor (Article 11-b).[59] Senators and representatives chosen by electors of their re-

[54] Yes, 530,432; No, 360,968.
[55] Yes, 706,293; No, 224,252.
[56] Yes, 648,213; No, 270,077.
[57] Yes, 545,091; No, 304,136.
[58] Yes, 571,311; No, 377,926.
[59] Yes, 96,061; No, 74,892.

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spective counties or districts are chosen, and vacancies are filled, as provided by law (Article 4, Section 3).[60] People's utility districts consisting of territory within one or more counties may include incorporated municipalities, with or without unincorporated territory, for purposes of water supply for domestic and municipal purposes, for water power, and for its sale. Such districts shall be managed by boards of directors consisting of five members selected from the residents of the districts. These districts enjoy the power to hold elections, levy taxes, contract indebtedness, enter into contracts, exercise the power of eminent domain, acquire property, and provide for a supply of water (Article 11, Section 12).[61] It is necessary that a majority of each house of the legislature, and of the electors voting, register approval of amendments.

Washington. Vacancies in either house of the legislature are filled by appointment by the board of county commissioners in the county where the vacancy occurs, to hold office until the next election. A vacancy in the office of joint senator is to be filled by appointment or joint action of the boards of county commissioners of the counties composing the joint senatorial district (Article 2, Section 15.)[62] Previously, writs of election were issued by the governor to fill such vacancies. The power of taxation may never be suspended, surrendered, or contracted away. All taxes must be uniform upon the same class of property within the territorial limits of the authority levying the tax, and must be collected only for public purposes. It is specified that property shall be interpreted to include everything, tangible or intangible. The properties of the United States, the state of Washington, counties, school districts, and municipal corporations are exempt from taxation. The legislature may tax mines, mineral resources, and lands devoted to reforestation, either by a yield tax or ad valorem at such a rate as the legislature may decide. Each head of a family may be granted a personal property exemption of three hundred dollars (Article 7, Sections 1, 2, 3, and 4).[63] Two-thirds of each house of the legislature, and a majority of the electors voting, supported these changes.

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[60] Yes, 85,836; No, 76,455.
[61] Yes, 117,776; No, 84,778.
[62] Yes, 133,255; No, 87,633.
[63] Yes, 138,231; No, 88,784.

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The Movement for Revision of the California Constitution: the State Constitutional Commission. The constitution of California—filling one hundred and sixty-five pages of fine print—has been the object of so much criticism, and even ridicule, that the people of the state are fairly well agreed that it ought to be given an overhauling. As to the nature and extent, as well as the method, of the proposed reconstruction, there is, however, little or no harmony of view. The fact that the state electorate has on a number of occasions declined to sanction the calling of a constitutional convention does not indicate that it is content to leave things as they are. But what, it is asked, might such an assembly do? Should it tamper with those sections dealing with the initiative, referendum, or recall, its work would come to nothing. Should it impair the powers of the railroad commission, or abolish the judicial council, or set up a new basis of taxation, or lessen the independence of the regents of the state university, or raise the salaries of legislative and executive officials, or take any one of a dozen other courses of action, large sections of the electorate would oppose the revised instrument. It is a fairly safe assumption that a constituent assembly that radically revised the present constitution would see its work discarded by the people. Therefore, since a constitutional convention could do nothing effective, why waste money on a futile adventure?

Since the adoption of the present constitution in 1879, there has been no studied revision. Californians have changed the instrument when and as they have seen fit, acting largely on proposals of the legislature.[1] They have followed no systematic plan; yet in most instances they have acted wisely. Piecemeal, sporadic, and unscientific modifications are not likely to produce a document of sufficient symmetry of form to be admired; nevertheless, the government thus established may prove quite workable, and, as American state governments go, highly successful.

[1] The California constitution may, in practice, be amended with great ease. This fact has encouraged the legislature to propose as constitutional amendments many changes of a statutory nature that might be viewed by conservative courts as being unconstitutional. The electorate has become so accustomed to approving or rejecting constitutional amendments that the man in the street refers to all proposals placed on the ballot as amendments. In the election of November, 1930, a Sunday-closing law was proposed by the initiative, and was supported by barbers' unions. In much of the literature on the subject circulated by the unions, they referred to the proposed law as an "amendment."

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The movement for reform came to a head through the action of the 1929 legislature in adopting two not wholly consistent proposals. The first concerned a constitutional convention. The legislature submitted to the electorate an amendment for the calling of such a convention. The second proposal was new. In it, the legislature authorized the governor to appoint a commission "to investigate and report upon the need for the revision of the constitution of the state of California," outlined the commission's powers and duties, and made an appropriation to cover necessary expenses. The commission was to be composed of fifteen members appointed by the governor. It was instructed to make a study of the California constitution and the constitutions of the other states of the Union; to report to the governor on the need of revision, presumably in the form of a new draft constitution; and to advise the governor on the need of calling a constitutional convention.[2]

Most of the commissioners appointed by the governor were at the time, or had been, prominent in some form of state activity. Doubtless the then approaching state primary had some influence on the selections made; yet men of real ability were included. In forming the commission, the governor selected representatives of a variety of social interests of importance. Wise and just though this may have been from a theoretical point of view, it seriously hampered the commission in its functioning. Possibly the body represented a cross-section of California opinion; possibly such a body would have been selected had the members been chosen by a system of proportional representation. At all events, they found serious difficulty in agreeing on the many controversial subjects they were compelled to handle. Had the commission less faithfully represented the state, it might have moved with greater speed and produced more startling results. Early it became apparent that should the commission propose a new constitution, it would depart from the existing document in but few major respects. While repair, not reform, was foreordained to be the watchword, it nevertheless happened that some of the commission's suggestions called for radical changes.

The commission was early organized into nine committees—on bill of rights and suffrage, legislative department, executive department, judicial department (including quasi-judicial bodies), municipal and county government, taxation, substantive law and schedule, consti-

[2] *Statutes of Cal.* (1929), p. 741. The writer served the commission in the capacity of research assistant.

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tutional research, and supplemental schedule. It was proposed that, with the assistance of a small technical staff, the commission should go at once to the consideration of the California constitution, examining as well the constitutions of the other American states. Progress might have been more rapid had the commission ordered the preparation of a revised draft of the California constitution for its consideration. But the body preferred to prepare its own revision originally; and hence the committees were instructed to revise the articles within their separate fields.

In its monthly meetings, the commission advanced with great care. Controversial subjects refused to stay settled, certain of them coming up for consideration at every session. Committees were often tardy in reporting, so that in the early summer there was a scarcity of matter for debate. As fall advanced, it became clear that it was time that had become scarce. But before the convening of the new legislature and the inauguration of a new governor, the commission made its report.

Direct legislation and bank taxation were discussed at considerable length. Although there was little unanimity of opinion regarding the initiative, referendum, and recall, the possibility of eliminating these instruments, or even of making their use more difficult, was not considered. Rather, it was decided that they should be made more available. One change suggested was a requirement that for every initiative measure ten electors should sign and act as sponsors, exercising a limited degree of control over the progress of the proposed measure. In place of the present initiative provision requiring the presentation of a petition signed by electors equal in number to eight per cent of those voting for the governor at the last preceding election—a provision that has become continually less workable as population has increased—the commission proposed that the securing of the signatures of 50,000 electors should be sufficient. If less than 50,000, but not less than 25,000, signatures should be obtained, the sponsors could elect to submit the measure to the legislature. Should the legislature fail to adopt the proposal as presented, it should go to the electorate with or without an accompanying legislative substitute. It was provided that for the initiation of an amendment to the constitution, 75,000 signatures should be obtained; and these provisions were made self-executing.

The proposal that the subject of taxation be entirely omitted from a revised draft of the constitution was not without support among members of the commission. Yet such a plan was not adopted. Cali-

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fornia experience has seemed to indicate that the legislature cannot yet be trusted with control of this subject, even although tax legislation be subject to the referendum.

In suggesting the creation of a state tax board, the commission departed radically from the present provision under which has been established an elected state board of equalization. The recommendation called for the creation of a board of five members, to be appointed by the governor for six-year terms, with duties administrative, legislative, and judicial in character. It was provided that the board should supervise the administration of the state's tax laws and the laws for the assessment of property for taxation; require reports from public officers and taxpayers and prescribe forms therefor; adopt necessary rules to prevent tax evasion; classify and value personal property for taxation; increase or decrease the entire assessment, or the assessment of any class of property, of a county or municipality in order to equalize the assessment of the property and make it conform with the true value of the property; control the assessment of all state taxes; hear and determine appeals relating to assessment of state taxes, or appeals of taxpayers from decisions of county assessors or boards of equalization; collect information; investigate the operation of tax laws; recommend to the legislature changes deemed advisable; and perform such other duties as might be provided by law.

The article providing for a legislature and defining its powers was considered at length. The commission was early committed to a proposal increasing the powers of the legislature. But should the organization of the body be changed materially? An articulate and determined minority favored statesmanlike action. If the powers were to be increased, provision should be so made that better legislators would be elected. The unicameral legislature was proposed and defended. The selection of a smaller number of legislators, and giving them adequate remuneration, was considered. Provision for annual meetings, and for the creation of an inner group of legislators, selected by the entire body, to remain in session throughout the year, received some support. But a recently adopted reapportionment law, approved by the electorate, convinced a majority of the commission that no change should be made in the legislature's structure.The commission's report called for the elimination of that section of the present constitution which prohibits the legislature from passing local or special legislation for thirty-three specified purposes, and substituted a section providing that the

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legislature should not pass local or special laws where general laws could be made applicable.

It was decided that the legislature should be empowered to change the courts and court system as it deemed necessary. Therefore, the provision of the federal Constitution setting up the federal judiciary was taken as a model. Membership in the judicial council was to be changed so as to include three members appointed by the governor, whose qualifications should be determined by the governor, and who should serve at his pleasure.

The commission suggested a means of resolving the existing conflict in the department of education between the elected superintendent of public instruction and the appointed board of education. The proposed provision called for the election of a state board of education, of eight members, to be chosen for eight-year terms, four members to be elected every four years. The actual administration of the department of education was to be placed in the hands of a director appointed by and responsible to the board. Aside from this, recommended changes in the executive departments were few. Although the ballot was to be shortened somewhat, the revised plan still called for the election of six state officers.

Should the revised plan be adopted, the governor would be given sixty, instead of thirty, days after the close of a legislative session in which to act on bills that had been passed. All measures failing to receive the governor's approval would have to be filed with the secretary of state, or become law.

The commission's report called for the creation of no new administrative bodies exercising so-called quasi-judicial duties. Those that have already been created were preserved. Provisions in those sections dealing with the judiciary were so worded as to make possible, should the report be adopted, the creation of such administrative bodies through legislative action.

Many sterile provisions were found in those sections of the present constitution which relate to local government. The legislature has, in effect, nullified the section calling for a general law controlling the establishment of county governments but allowing classification according to population, by setting up as many different classes as there are counties. This section was eliminated from the revised draft. Special detailed sections were inserted making possible certain city and county consolidations; yet the commission's article on local government

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is scarcely an eighth of the length of the present article. Indeed, the proposed constitution, as a whole—although embracing 317 sections—is less than half as long as the existing one.

The legislative act creating the commission requested that it submit a model constitution for consideration, as well as a reconstruction of the present one. What might have proved an extremely difficult task was performed in one meeting of the commission by the inclusion in its report of the "model state constitution" proposed by the National Municipal League.

The question of whether the calling of a constitutional convention should be recommended was settled during the life of the commission by the electorate; the legislative proposal for such a convention was defeated at the November election. The commission made an alternative recommendation to the effect that the legislature should submit to the people a constitutional amendment permitting the legislature itself to revise the constitution in its entirety, the complete revised instrument to be submitted to a popular vote for their approval.

Since the filing of the commission's report, a new administration has come into office; and as to the proposals made, nothing has been said. By no sign can its attitude toward the report be ascertained. Nevertheless, the commission's work, although receiving no official recognition, may not come to naught. If a complete and systematic revision is really desired, the adoption of a single amendment to the present constitution will enable the legislature to prepare it, or have it prepared. The specific reforms recommended by the commission may be of value as guides in such an effort. Many of them might with wisdom be incorporated into the constitution separately.

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Operation of the Literacy Test for Voters in New York.[1] The education department of the state of New York, which is charged with the administration of the literacy test law of 1923, has recently submitted a report on the workings of the measure from 1923 to 1929. The document furnishes some very illuminating evidence, not only on the operation of the literacy test for voters, but on other phases of political action.

[1] See notes by the writer in this *Review*, May, 1923, and November, 1925. Cf. A. W. Bromage, "Literacy and the Electorate," *ibid.*, November, 1930.

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A. *Total Number Applying for Certificates of Literacy*

1923	*1924*	*1925*	*1926*	*1927*	*1928*	*1929*
33,795	76,280	39,457	43,855	55,276	163,299	51,081

These figures indicate a steady increase of interest in voting in the state of New York, if the presidential years are not included. Despite the peak applications of 1928, a larger number of new voters applied in the off-year 1929 than in the gubernatorial year 1926. The figures for 1928 are particularly significant. The Hoover-Smith campaign brought out a record number of non-voters who had never participated, and it must be recalled that these 163,299 persons had either become of age or had been naturalized since January 1, 1922. They do not include persons who were qualified but had never voted before the literacy test law became operative.

B. *Presentation of School Certificates*

	1923	*1924*	*1925*	*1926*	*1927*	*1928*	*1929*
Day Schools	7,829	13,848	7,668	7,718	10,162	29,833	4,184
Evening Schools ..	767	1,288	930	1,174	1,441	3,601	473

This method of securing a certificate of literacy, as provided for in the law, has not been used to the extent that is possible. Many persons who have completed the fifth grade are unable to secure a statement from their school authorities, and prefer to take the comprehension test rather than to take the trouble to locate their certificates. Those in charge of the examinations report that many persons stated that the schools were closed in the evening and that the principal was not available. The school records were lost in some cases, and those who had attended school in other communities could not get their certificates.

C. *Results of Literacy Test*

	1923	*1924*	*1925*	*1926*	*1927*	*1928*	*1929*	*Totals*
Taking test	25,199	61,144	30,859	34,963	43,673	129,864	46,483	472,126
Passed	19,806	24,888	25,358	28,108	37,002	116,760	41,380	317,302
Failed	5,393	12,256	5,501	6,855	6,671	13,104	5,044	54,824
Per cent failed .	21.4	16.1	17.8	19.6	20.66	10.09	10.84	14.9

The percentage of failures has declined in the two presidential years —in 1924, to 16.1, and in 1928, to 10.09. The school authorities report an unusual determination on the part of applicants in 1928. The campaign was hot in New York, and partisanship on both sides was intense. The failures in 1929 remained at the low level of 1928. The best ex-

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planation to be given for the decrease in failures is the increased efficiency of the evening schools and special schools for foreign-born women and the requirement of judges that applicants for naturalization be able to read and write.

D. *Comparison of Men and Women Applying for Certificates of Literacy*

	1923[1]	*1924*	*1925*	*1926*	*1927*	*1928*	*1929*
Men		60,022	30,477	34,305	41,820	104,980	37,108
Percentage		78.6	77.2	78.2	75.67	64.28	72.65
Women		16,258	8,930	9,550	13,438	58,319	13,972
Percentage		21.4	22.8	21.8	24.33	35.72	27.35

[1] No statistics available for 1923.

The above table is a commentary on woman suffrage. The number of woman voters in New York who have never voted is very large, and undoubtedly in this group are numerous foreign-born women who have been naturalized but who have never ventured to take the literacy test for voting. This would not account entirely for the difference in percentage figures for the two sexes. Apparently the parties could do much work in enlisting women voters who have never bothered to qualify. These figures help to maintain the assertion that half of the women are not interested in the suffrage. The increase in the percentage of women who applied in 1928 further bears out the statement so often made that the woman vote was a great factor in the result. In 1929, the percentage decreased from the high figure of 1928, but did not reach the lower levels of earlier years. This may represent a large number who wanted to vote in 1928, but were prevented by the age requirement.

E. *Failures in Literacy Tests by Men and Women*

	1923[1]	*1924*	*1925*	*1926*	*1927*	*1928*	*1929*
Men		11,448	5,017	6,281	5,983	11,135	4,394
Percentage		23.5	19.7	22.4	16.7	11.8	13.4
Women		808	442	574	670	4,970	650
Percentage		5.2	5.2	6.4	5.2	9.3	4.8

[1] No statistics available for 1923.

One point is clear from the above table. The women have proved more adept than the men in passing the examinations for the literacy certificate. The only year in which the percentage of failures of women approached the failures of men was 1928. This is difficult to explain

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on the ground that many women who lacked interest in voting in previous campaigns suddenly found that they wished to vote, and rushed to take the examinations, with a consequent increase of failures. If the reason given above is sound, the percentage of failures of men should have increased; but as a matter of fact this percentage decreased to its lowest point.

This is the first time in the history of the literacy test for voting, which was first used by Connecticut in 1855, that we have had objective material as to its effectiveness. The principal conclusions may be summarized thus: (1) the literacy test is actually enforced, as indicated by the fact that 14.9 per cent have failed in the past six years; (2) in New York, there has been a steady increase in the interest of new voters in elections; (3) interest in presidential years is greater than in other years; (4) women show a relatively lower percentage of interest than do men; (5) women are more successful than men in passing the test; and (6) the literacy test has developed interest in evening schools on the part of the foreign born.

The administration of the law has entailed little difficulty. Some education officers have been tempted with bribes; some have been threatened; and in a few cases substitutes have been detected in the act of taking the test. Registration boards have generally coöperated. The bi-partisan board prevents much abuse, and in a few instances a report has been made to the educational authorities where persons were registered illegally. In those sections of the state where the bi-partisan board is not used, there is a greater opportunity for the board to accept applicants for registration without requiring the literacy certificate. However, there is no evidence that this has actually been done.

The success of the law in New York is unquestioned. The system might easily have become a mere form; but because its administration was placed in the hands of the educational authorities, it has become of great value. The voters in New York must actually be able to read, write, and understand.

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LEGISLATIVE NOTES AND REVIEWS

Governors' Messages, 1931.[1] One line of business which does not seem to be greatly affected by the present "world-wide depression" (to quote the Republican governors) is that of law-making. Forty-three of the state "law factories" opened for business in January, and doubtless some of them will still be "in production" at the time when this summary appears in type.[2] The constitutions of most of the states provide that the governor shall report to the legislature upon the condition of the state and recommend such measures for its consideration as he may deem expedient. The picture of the economic, social, and political situation in the states as revealed by the messages of fifteen of the twenty-three retiring governors, who may be presumed

[1] The fifty-eight messages dealt with in this summary are: Alabama, Bibb Graves, outgoing, B. M. Miller, incoming; Arizona, George W. P. Hunt; Arkansas, Harvey Parnell; California, C. C. Young, outgoing, James Rolph, Jr., incoming; Colorado, William H. Adams; Connecticut, Wilbur L. Cross; Delaware, C. Douglass Buck; Georgia, L. G. Hardman; Idaho, C. Ben Ross; Illinois, Louis L. Emmerson; Indiana, Harry G. Leslie; Iowa, John Hammill, outgoing, Dan W. Turner, incoming; Kansas, Harry H. Woodring; Maine, William T. Gardiner; Maryland, Albert C. Ritchie; Massachusetts, Joseph B. Ely; Michigan, Fred W. Green, outgoing, Wilber M. Brucker, incoming; Minnesota, Theodore Christianson, outgoing, Floyd B. Olson, incoming; Missouri, Henry S. Caulfield; Montana, J. E. Erickson; Nebraska, Arthur J. Weaver, outgoing, Charles W. Bryan, incoming; Nevada, Fred B. Balzar; New Hampshire, Charles W. Tobey, outgoing, John G. Winant, incoming; New Jersey, Morgan F. Larson; New Mexico, Arthur Seligman; New York, Franklin D. Roosevelt; North Carolina, O. Max Gardner; North Dakota, George F. Shafer; Ohio, Myers Y. Cooper, outgoing, George White, incoming; Oklahoma, W. J. Holloway, outgoing, William H. Murray, incoming; Oregon, A. W. Norblad, outgoing, Julius L. Meier, incoming; Pennsylvania, John S. Fisher, outgoing, Gifford Pinchot, incoming; Rhode Island, Norman S. Case; South Carolina, John G. Richards, outgoing, Ibra C. Blackwood, incoming; South Dakota, W. J. Bulow, outgoing, Warren E. Green, incoming; Tennessee, Henry H. Horton; Texas, Dan Moody, outgoing, Ross S. Sterling, incoming; Utah, George H. Dern; Vermont, John E. Weeks, outgoing, Stanley C. Wilson, incoming; Washington, Roland H. Hartley; West Virginia, William G. Conley; Wisconsin, Philip F. La Follette; and Wyoming, Frank C. Emerson (deceased).

[2] Of these, thirty-seven met in regular biennial session, four in regular annual session, one (Alabama) in regular quadrennial session, and one (Georgia) in extraordinary session. Governor Bilbo of Mississippi has agreed to call a special session if a majority of the members of the legislature will sign a pledge to adopt his proposed program without change. See *State Government*, Vol. 4, No. 3, pp. 18-19, for a copy of his letter and the accompanying pledge.

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to know a good deal about state problems, and forty-two others, ten of whom had served a part of their term, ten of whom had been reëlected, and twenty-two of whom were newly chosen to office, is not particularly reassuring to those who would view the future of state government in an optimistic light. While most of the messages open with a note of assurance that in spite of the economic depression the conditions in the state in question are not as bad as in many others, the remainder of the document frequently fails to corroborate this statement. Every state seems to be grappling with serious problems of unemployment, shrinking revenues, and increasing demands for service, inequitable taxation, agricultural depression, bank failures, and inadequate public utility regulation. Stringent limitations of space will permit a discussion of the remedies which are proposed by the governors for only the major political, social, and economic ills of our state bodies-politic.

Unemployment. Thirty-seven messages take cognizance of the economic situation and unemployment. Nearly all of the governors see in this situation an imperative necessity for economy in governmental expenditures. "The government should retrench even as the private citizens who must support the government are retrenching." Of course, such a conclusion does not necessarily follow. In so far as commodity prices have declined, and salaries and wage scales have been or can be reduced, economy in state expenditures seems justifiable. But the legitimate demand upon the part of the people for the undertaking of new and wider services by government is accentuated by economic depression. When private enterprise can no longer be conducted at a profit, there is a strong urge for government to take it over. Elaborate public works must be undertaken to provide jobs. This expansion may well absorb whatever may be saved through lower prices for men and materials, so that we cannot look for a reduction in gross expenditures.

The governors themselves are often inconsistent on this point. After urging strict economy, many of them strongly advise new activities which would cost far more than could be saved by a close trimming of budget estimates on existing activities. Governor Hunt of Arizona, for instance, urges the restoration to the highway department of authority to do an unlimited amount of work on force account—losing the economy of competitive bidding—merely in order to assure jobs to Arizona residents. He also urges a building program at state institutions. Governor Ely of Massachusetts recommends the issuance of $20,000,000 in bonds to supplement current revenues for buildings and

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trunk highway construction. While Governor Christianson of Minnesota fires a departing economy shot, his successor, Governor Olson, decries the "false economy" of his predecessor and urges the resumption of a substantial building program at the state institutions, partially as a relief for unemployment. A $14,000,000 building program is recommended by Governor Pinchot in Pennsylvania, in addition to the regular highway program; $140,000,000, or forty per cent of the total state budget, is recommended for work available for unemployment relief. Governor La Follette points out that "sound financial policy requires the establishment of reserves in times of prosperity for meeting capital charges in times of depression." If such a policy had been followed in the states, there would be no great need for new revenues and bond issues to meet the financial crisis precipitated by the depression. However, such a program would be very difficult, due to the natural tendency of each legislature to appropriate all available funds for current projects.

Many of the governors have sought to deal with unemployment through committees on stabilization of employment. Such agencies are mentioned in the messages of eleven governors—Cross of Connecticut, Emmerson of Illinois, Ritchie of Maryland, Green of Michigan, Christianson of Minnesota, Tobey of New Hampshire, Larson of New Jersey, Roosevelt of New York, Cooper of Ohio, Pinchot of Pennsylvania, and Richards of South Carolina. If these organizations can be made permanent, and can be adequately financed, a recurrence of the 1930 depression should be greatly tempered in severity.

Law Enforcement; Crime; Prisons. Closely allied with the unemployment problem, crime has shown an alarming increase during the past two years. Crime commissions have been active in the study of this problem in a number of states. The Indiana and Montana commissions are making their reports this year, as is also the judicial advisory council of Illinois. Governor Hammill of Iowa acts as a one-man commission, suggesting in eight paragraphs the causes of crime.

Law enforcement agencies have proved inadequate in several states. Governor Graves of Alabama commends the state police; while his successor, Governor Miller, condemns it and recommends its abolition as an economy measure. Governors Emmerson of Illinois, Green and Brucker of Michigan, Larson of New Jersey, Fisher of Pennsylvania, and Conley of West Virginia are enthusiastic in their praise of the state police forces in their states. Governor Meier would establish such

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a force in Oregon, Governor Tobey in New Hampshire, and Governor Olson in Minnesota. Moody of Texas favors an expansion of the powers of the highway police to make them general police officers. White of Ohio and Hammill of Iowa are opposed to the creation of a state constabulary.

Many changes in criminal codes are recommended. Governor Hunt of Arizona desires a less "barbarous" means of exacting the death penalty. Governor Brucker of Michigan would make racketeering a crime. Roosevelt of New York asks for a state crime investigating bureau, and extension and improvement of the probation system. Hartley of Washington advocates an indeterminate sentence, with a fixed maximum but no minimum. Bryan of Nebraska advocates the repeal of the indeterminate sentence law, the amendment of the law relating to pardon and parole to prevent clemency except upon the recommendation of the trial judge, and the raising of the minimum sentence under the habitual criminal act from ten to twenty years. Olson of Minnesota asks for indictment by information in the place of the grand jury in criminal cases. Norblad of Oregon asks for the creation of a parole board of seven members, to be appointed by the chief justice of the Supreme Court. Richards of South Carolina would give the governor the power to remove sheriffs for disregard of duty in cases of lynching. Sterling of Texas asks for a state bureau of criminal identification. Ritchie of Maryland advocates the strengthening of the parole system.

Classification of offenders is earnestly urged in the messages of Governors Hunt of Arizona, Young and Rolph of California, Adams of Colorado, Hammill of Iowa, Ritchie of Maryland, Cooper and White of Ohio, Norblad of Oregon, and Moody of Texas. Sterling of Texas emphasizes the need for modernization of penetentiary facilities. Caulfield of Missouri points out that his state will soon have adequate facilities for segregation of first offenders. Christianson of Minnesota urges the establishment of regional work-houses to take the place of county jails.

The passage by Congress of the Hawes-Cooper Act has raised serious difficulty in many of the states. This fact is mentioned in the messages of ten governors—Graves of Alabama, Leslie of Indiana, Hammill and Turner of Iowa, Ritchie of Maryland, Caulfield of Missouri, Tobey of New Hampshire, Wilson of Vermont, Conley of West Virginia, and Emerson of Wyoming. Governor Graves suggests, however, that "so

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long as privately owned American mills can profitably sell in foreign markets, especially in Asia and Latin America, the state's convict mills can surely do likewise.'' Governor Conley sees road construction as an outlet for prison labor; while Governor Emerson suggests an agreement with other western states for the interchange of prison-made goods for state use. Those states which have been using the contract labor system in their penitentiaries will have to face a serious problem when the federal law takes effect in 1934. Interstate coöperation for state use of prison-made goods seems now to be the most desirable solution. Governor Ritchie of Maryland reports that the fourteen eastern states are now organized to study the problem of prison employment.

Eleven of the governors mention prohibition. Of these, Cross of Connecticut and Case of Rhode Island favor repeal of the Eighteenth Amendment. Ely of Massachusetts asks for a memorial to Congress in favor of a modification of the Volstead Act. Strict enforcement of both federal and state prohibition laws is advocated by Turner of Iowa, Woodring of Kansas, Tobey of New Hampshire, Pinchot of Pennsylvania, Richards and Blackwood of South Carolina, Sterling of Texas, and Conley of West Virginia.

State Finance and Taxation. It is practically impossible to gain accurate information on the financial condition of the states from the governors' messages. Deficits are not pleasant subjects for publicity, except for new incumbents of opposite political faith from their predecessors. On one important point, however, all who deal with this subject seem to agree, namely, that tax revenues are declining and that the total revenues for the biennium 1929-30 will fall far short of the estimates made in the more roseate summer of 1929. This sharp decline in revenues without a corresponding reduction in legislative authorizations for expenditure has led most of the state treasuries ''into the red.'' The necessity of preparing budgets for 1931-32 has forced upon many chief executives a realization that economies must be effected or new revenues must be sought if budgets are to be balanced.

Another factor which tends to complicate this financial situation in those states which still rely on the general property tax for all, or a part of, their revenue is an insistent demand by farm and real estate organizations that real property be relieved of a substantial part of the tax burden it now bears. In some states, also, chambers of commerce are advocating a reduction in corporation taxes. If these de-

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mands are to be acceded to, to any substantial extent, it will, of course, be necessary to find new sources of income without indirectly laying a burden on the same taxpayers who are asking for relief. Many suggestions are brought forward by the governors as solutions for this problem. Some states have appointed special investigating commissions, and the governors have suggested the adoption of the recommendations made by these bodies. Such is the situation in California, Illinois, Indiana, Iowa, Michigan, Missouri, New Hampshire, Ohio, South Dakota, Vermont, Washington, West Virginia, and Wyoming. Governors Hunt of Arizona, Cross of Connecticut, Weaver of Nebraska, Seligman of New Mexico, Balzar of Nevada, and Horton of Tennessee recommend that similar studies be made in their states.

There is little agreement among the governors on the types of taxation which should be employed. Few of them seem to have any knowledge or appreciation of the so-called "model system" evolved by the National Tax Association. Only Weaver of Nebraska mentions it by name. For instance, Governor Graves of Alabama suggests a new gross receipts tax on picture shows, a gallonage tax on the syrup used in soft drinks, and an additional cent of gasoline tax (making the total six cents.) Cross of Connecticut advocates a reduction in the rate of interest on unpaid taxes. Buck of Delaware asks for a fifty per cent reduction in income tax rates. Hardman of Georgia suggests a reduction in the exemptions on the sales tax, the placing of a tax on smoking tobacco, and the diversion of half of the proceeds of the automobile license tax to meet emergencies in the eleemosynary institutions. Ross of Idaho recommends an income tax and a constitutional amendment to permit the classification of property for taxation. Emmerson of Illinois suggests that intangible property should bear a larger share of the tax burden. Hammill of Iowa suggests an increase in the school fund from taxes on cosmetics, tobacco, soft drinks, and other nonessentials. Turner of Iowa recommends an individual and corporate income tax, reduction of exemptions in inheritance taxation, and revision of the laws relating to the assessment of property. Woodring of Kansas asks for permanent, trained assessors, an income tax as equitable as may be under the state constitution, and increased fees to cover the cost of service by special agencies. Green of Michigan favors an income tax. His successor, Governor Brucker, asks for the repeal of the malt tax as not in keeping with the dignity of the state, and suggests the refinancing of all outstanding bonds to take advantage

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of low interest rates. Olson of Minnesota suggests a reclassification of property in the interest of the farming population. Erickson of Montana would exempt from taxation grain stored by farmers. Caulfield of Missouri asks for an increase in the income tax rate from one to two per cent. Weaver of Nebraska asks for an increase in the gasoline tax, and for the abolition of local assessors. Bryan of Nebraska recommends an income tax, a repeal of the intangible tax, and a refund of the tax on gasoline used in tractors. He opposes an increase in the gasoline tax.

Larson of New Jersey calls attention to the difficulty encountered by his state in attempting to apply a gross receipts tax to public utilities without excluding interstate business. He opposes an income tax, and advocates a more adequate tax on motor vehicle common carriers. He would retain the tolls from bridges and tunnels after the improvements have been paid for, in order to reduce general taxation. Gardner of North Carolina advocates an increase of two cents in the gasoline tax (making a total of six cents), devoting the increase to taking over the maintenance of all county highways now maintained from the proceeds of the general property tax. He also suggests that the quadrennial revaluation of real estate, due to be made in 1931, be postponed for two years, partly because of lack of data on property values and partly because of the expense to the counties. Governor Shafer of North Dakota suggests that the gasoline tax be increased by one cent per gallon, and that motor vehicle fees be increased; that the basis of taxation of express companies be changed from franchise value to gross earnings, due to the change in their method of doing business; that a more equitable basis of taxation for motor vehicle common carriers be devised; that all stored grain be exempt from taxation; and that a sales tax be placed upon butter substitutes.

The adoption of a constitutional amendment abolishing the uniform rule in Ohio has raised the question of a general revision of the tax system. Governor Cooper, in his exaugural, stresses the necessity of relieving the farmer and home owner, and of providing adequate revenue for schools. Governor White, his successor, favors a tax on intangibles, and is opposed to an income tax. Murray of Oklahoma favors a tax on dividends, and an income tax on public employees as a temporary expedient. Norblad of Oregon asks for a new intangible tax law to replace one invalidated by the state supreme court. Richards and Blackwood of South Carolina suggest an intangible tax, under a newly adopted provision of the state constitution. Green of South

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Dakota recommends an income tax, an admissions tax, a tax on all forms of tobacco and on butter and lard substitutes, and a further limitation of exemptions. Horton of Tennessee proposes another cent of gas tax to retire the Smoky Mountain Park debt, and one for secondary roads. Dern of Utah advises against a tax on intangibles as property, and against a sales tax, in favor of a personal and corporate income tax at a low rate and additional excise taxes. Hartley of Washington feels that "the sales tax is the one medium through which values can be restored to property." He also advocates the repeal of the mill tax for university support. Conley of West Virginia asks that authority be given to pay taxes in two installments, and that assessment of real estate be equalized. La Follette of Wisconsin recommends that all dividends, from whatever source derived, be taxed; that the reciprocal inheritance tax law be repealed; and that the income tax department be authorized to go back six years in auditing accounts to determine amounts due. Emerson of Wyoming suggests a constitutional amendment to permit the enactment of an income tax law.

In all of the messages in which new taxes were suggested, it was clearly pointed out that any new revenue should be used principally—or exclusively—for tax relief to real estate. Many of the governors qualified their recommendations by stating that they would favor new taxes only if they were coupled with provisions in the law to prevent tax increases by local governments to absorb the difference.

Administrative Reforms. In three states, the results of comprehensive administrative surveys were presented to the legislatures for adoption. These were Arkansas, Maine, and North Carolina. The first two studies were made by the National Institute of Public Administration, the third by the Brookings Institution. In each case, a reorganization to centralize authority and responsibility in the governor was recommended. Governor Cross of Connecticut, in his message, refers to the surveys which have already been made, and suggests that a legislative committee be appointed to study them and report a new plan to the present session. Larson of New Jersey comments unfavorably on the comprehensive survey made in his state. In his judgment, good personnel is more important than theoretically perfect organization.

New comprehensive surveys are recommended by Governors Shafer of North Dakota, Miller of Alabama, and Hunt of Arizona. Other governors who would make drastic changes in administrative organization, but who do not seem to favor preliminary surveys, include Bryan

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of Nebraska, Murray of Oklahoma, Meier of Oregon, and Moody of Texas. Weaver of Nebraska favors the concentration of administration in the hands of the constitutional officers. Green of South Dakota and Horton of Tennessee advise against tampering with the administrative machinery. Proposals for the consolidation of two or more administrative agencies dealing with related work, or for the change of commissions to single-headed agencies, are made by a number of governors. Miller of Alabama proposes the elimination of the tax commission, highway commission, and board of administration; Richards of South Carolina would combine the tax commission with the office of comptroller; Meier of Oregon would replace the utilities commission by a single commissioner; Hartley of Washington would abolish the tax commission in favor of a single commissioner, and would abolish entirely the judicial council and the uniform law commission; Hunt of Arizona asks for concentration of all legal work in the attorney-general's office, and for the consolidation of related work into departments of agriculture, horticulture, and health; Conley of West Virginia would consolidate three welfare agencies into one; Buck of Delaware suggests the consolidation of twenty-two welfare agencies; Gardner of North Carolina would unify highway administration by abolishing the nine highway districts and consolidating the work at Raleigh; Hammill and Turner of Iowa promise to specify the departments to be affected in a special message; Tobey of New Hampshire desires a consolidation of the banking and insurance departments; Richards of South Carolina would abolish the tax commission and warehouse commission and combine others; Emerson of Wyoming would create a livestock sanitary board from two present agencies; Sterling of Texas recommends that the departmental work of the state be knit more closely together.

Centralized purchasing is recommended in Oregon, Rhode Island, Iowa, New Mexico, and West Virginia. Improved budget procedure is asked in Georgia, Delaware, New Hampshire, Oregon, and Vermont. Turner of Iowa would abolish the office of budget director and confer his functions on the state board of assessment and review. He declares that he is in favor of the budget principle, but wishes to economize in personnel. Buck of Delaware feels that the budget should be prepared by a board of which the governor is not a member. Better accounting methods are suggested in Michigan, New Hampshire, Oregon, and Rhode Island. Olson of Minnesota proposes a state printing plant.

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Cooper of Ohio asks that the number of special funds be reduced. The treatment of fee receipts as special expendable funds has led to the recommendation that they be paid into the state treasury and subjected to appropriation, by Governors Adams of Colorado, Buck of Delaware, Seligman of New Mexico, Murray of Oklahoma, Norblad of Oregon, Richards of South Carolina, Bulow of South Dakota, Wilson of Vermont, and Hartley of Washington. Centralized collection of revenues is urged by Seligman of New Mexico, and abolition of continuing appropriations by Adams of Colorado.

The creation of a tax commission is recommended by Governors Hardman of Georgia, Horton of Tennessee, and Murray of Oklahoma. Murray would make it the sole tax-collecting agency. Seligman of New Mexico would expand the powers of the board of finance to deal with emergencies. Moody of Texas asks power to veto items in appropriation bills, and suggests that the governor be given continuing control over expenditures. Norblad of Oregon suggests the desirability of an executive pre-audit. Green of Michigan proposes as a means of financial control that the books of the state be closed each year, so that balances remaining at the end of the first year of a biennium would not be available to pay obligations incurred during the second year. Richards of South Carolina thinks there should be an annual independent audit. Seligman of New Mexico, Murray of Oklahoma, and Horton of Tennessee ask for laws against official graft, and Horton suggests a legislative committee to make an official investigation of all state offices. Adams of Colorado wants a longer time after the passage of the appropriation act in which to give it consideration before signature.

Other administrative reforms suggested include a four-year term for governor, advanced by Roosevelt of New York; biennial sessions of the legislature, proposed by Blackwood of South Carolina; elimination of ex-officio members of boards and commissions, advocated by Dern of Utah; and a short ballot for state offices, suggested by Ely of Massachusetts. Rolph of California and Murray of Oklahoma are particularly bitter against commissions which they cannot control, due to overlapping terms. On the other hand, Buck of Delaware feels that one of the greatest weaknesses of the school code is that the terms of all of the members of the board expire at the same time. Ritchie of Maryland advocates a retirement system for state employees. Adams of Colorado would take all department and bureau heads out of the civil

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service, to make them entirely subject to the governor's control. Seligman of New Mexico seeks salary standardization for state employees. Meier of Oregon advocates veteran preference in the state service.

Governor Hunt of Arizona describes an interesting situation in his state, where the preceding administration had borrowed money for state purposes from private corporations to avoid calling a special session of the legislature. The lenders, it seems, were very much opposed to such a special session. He recommends the appropriation of funds to repay the loan, but warns against the establishment of a precedent. Emerson of Wyoming reports an interesting experiment in which an unofficial group of private citizens sat in on the preparation of the state budget. Emmerson of Illinois speaks highly of the advisory committee system. Brucker of Michigan would have authority given to the state administrative board to create special commissions for the study of pressing state problems as the need arises. Shafer of North Dakota thinks that the management of the state's mill and elevator properties should be taken from the governor and placed in the hands of a commission.

Local Government. State officers are prone to conclude that local government officers are not wholly capable of managing their local affairs, particularly in matters of finance. Local officers, on the other hand, having recourse to the time-honored plea of home rule, are quite as certain that all wisdom lies with them in such matters. Regardless of the final outcome of this controversy, there seems to be a well-defined tendency for the states more and more to subject local governments to central legislative and administrative control.

Evidences of this tendency are found in the messages of several governors. For instance, Parnell of Arkansas would limit the bonding power of school districts. Rolph of California says that "the state should maintain some centralized supervision of local taxation." He tempers his suggestion, however, by limiting it to "accumulating information and investigating and advising the local taxpayers on the merits of proposed major expenditures or commitments." Other governors go further. Woodring of Kansas would require a vote of a majority of the qualified voters on all bond issues, in the place of a majority of those voting on the question as at present. Shafer of North Dakota believes that the legislature should rigidly limit the purposes for which municipalities may create debts. Horton of Tennessee would limit the issuance of bonds to ten per cent of the assessed valuation

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unless two-thirds of the population approve a higher ratio. Conley of West Virginia advocates state supervision over local tax expenditures and budgets. Green of Michigan declares himself in favor of the Indiana plan of supervision over local finance. Weaver of Nebraska would establish strict budget systems for local governments. Christianson of Minnesota recommends that the people of every city and village have a referendum on all local budgets and bond issues. His successor (Governor Olson), on the other hand, recommends the complete removal of tax limits on all local governments. Hartley of Washington would restrict the voting on bond issues in school districts to registered voters, and would provide that a majority might approve the issue if seventy-five per cent of the vote at the last general election were cast. Emerson of Wyoming believes that citizen participation in the making of local budgets might result in considerable economies. Leslie of Indiana points out the need for close supervision of expenditures in state-aid school districts. Pinchot of Pennsylvania suggests that local borrowing power be expanded in times of depression. Case of Rhode Island would rely on publicity to aid in control over local finances, and asks that reports of local financial transactions to a state officer be made compulsory. Blackwood of South Carolina offers the unique suggestion that the state underwrite all local bond issues, thus securing a lower interest rate.

Complete reorganization and modification of local government in New York is recommended by Governor Roosevelt, who asks for a commission to study the subject. He also recommends an investigation of the government of New York City. A survey of county government is recommended by Buck of Delaware. The results of such a county survey in North Carolina were laid before the legislature by Governor Gardner. As a result of the study, he recommends additional restrictions on the borrowing power, and the passage of legislation authorizing counties jointly to use a common jail, county home, health department, and convict camp. Murray of Oklahoma favors the county manager plan, and would abolish townships. In New Jersey, Governor Larson reports the results of a survey of local taxation and finance.

Some of the governors are beginning to see the advantages of the consolidation of local areas to reduce the overhead costs of government. Gardner of North Carolina recommends compulsory consolidation of certain small counties. A similar suggestion is made by Green of Michigan, Horton of Tennessee, Murray of Oklahoma, and Leslie of

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Indiana. Brucker of Michigan favors consolidation of local offices. Moody of Texas advocates city-county consolidation.

Education. In discussing the problems of education, the governors face a serious dilemma. The economic condition of most of the states demands retrenchment in public expenditures. Yet retrenchment in school expenditures is not politically popular. Hence, most of the chief executives are content to straddle the issue. The most satisfactory method of straddling in such matters is to appoint a commission; it has the unanswerable advantage of deferring action until "all the facts are available." Such a solution usually satisfies the educators, too. They know that if a "competent" staff is employed to make the survey, a need for greatly increased school support will be conclusively shown. When such a report reaches the legislature, the members throw up their hands at the impossible character of the "needs" shown, and the cycle starts again. Meantime, the schools gradually gain support—or at least do not lose it—and are satisfied.

Survey reports dealing with one phase or another of public education were submitted this year to the legislatures of Arkansas, California, Indiana, Kansas, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Tennessee, and Utah. A survey for the ensuing biennium is recommended by Governor Gardiner of Maine.

Changes in administrative organization in connection with the schools are recommended by several governors. Balzar of Nevada would establish a state educational board of seven. Green of Michigan and Hartley of Washington advocate the consolidation of the boards of trustees of the state institutions of higher education. Ross of Idaho and Seligman of New Mexico ask that the schools be "taken out of politics." Murray of Oklahoma suggests that church and political affiliations be disregarded in appointing teachers. Ritchie of Maryland feels that the state university is an unnecessary burden on the taxpayers.

Increased state aid to poor school districts is recommended by nine governors—Graves of Alabama, Hammill of Iowa, Brucker of Michigan, Olson of Minnesota, Caulfield of Missouri, Cooper and White of Ohio, Wilson of Vermont, and Conley of West Virginia. The need for new sources of revenue for this purpose is mentioned in Michigan, Ohio, and West Virginia. Moody of Texas proposes a county unit system, to be supplemented by state aid. Free text-books are suggested by Meier of Oregon and Murray of Oklahoma. Woodring of Kansas

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asks for a legislative committee to study the text-book situation in that state.

Economy through consolidation of school districts is suggested by Parnell of Arkansas, Hammill of Iowa, and Cooper of Ohio. Blackwood of South Carolina would eliminate state aid for building purposes, and would substitute attendance for enrollment as a basis for the distribution of aid. Hammill of Iowa and Olson of Minnesota point out that expensive buildings are relatively non-essential to an educational program of high standard. Hartley of Washington would try to equalize supply and demand in teacher-training by establishing a quota for state normal schools. Rolph of California advocates a teachers' tenure act and increased retirement allowances.

Duplication of effort in state institutions of higher education is deplored by Rolph of California, Green of South Dakota, Moody of Texas, Hartley of Washington, and Murray of Oklahoma. Governor Murray offers a comprehensive, but somewhat unintelligent, program for economy in the institutions of higher education in his state by prohibiting sabbatical leaves and supplementary compensation to teachers, by establishing a forty-eight-hour week for university instructors, by discharging thirty per cent of the university staff (which would be rendered unnecessary by the longer hours of work), by abolishing athletics, by eliminating "useless" courses, and by requiring everyone who wished to attend the university to be a graduate of a junior college. No student would be admitted except upon examination. He suggests also a reconstitution of the state board of education so that it will be "a composite of the educational system." Miller of Alabama suggests a need for "more brain and less brawn culture." Rolph of California shares in the criticism of "frills" in modern education, suggesting the need for, and probable economy of, a return to fundamentals. This same sentiment is expressed by Green of Michigan. On the other hand, Dern of Utah waxes eloquent in his defense of modern education and the "enriched curriculum."

Public Utilities. The regulation of public utilities is a vital issue. Cross of Connecticut asks that the public utilities commission be given power to begin proceedings upon its own motion. He also suggests that information on rates, now available in the files of the commission, be published for general distribution over the state, and that the state assume jurisdiction over the accounts and security issues of public utility companies. Ross of Idaho speaks in glowing terms of

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the advantages of municipal ownership of water and electric plants, and suggests that municipal corporations be given every encouragement to that end by making municipal ownership possible without a popular referendum. He also suggests that higher salaries be paid to members of the public utilities commission. Olson of Minnesota suggests that an interim committee be appointed to devise a plan for adequate regulation of public utilities.

In Iowa and Texas—two of the few states which do not have utilities commissions—Governors Turner and Moody recommend that such agencies be established. Governors Turner and La Follette suggest that cities be empowered to issue mortgage bonds to acquire or construct utility properties. Woodring of Kansas believes that utility rates should be reduced, but complains that the utility commission has never had adequate funds for the making of studies on the basis of which rates could be lowered. He asks for increased funds, and suggests that they be secured through a tax on the public utility corporations. Caulfield of Missouri counsels the continuance of special appropriations to the public service commission to enable the making of valuations and audits of utilities.

Holding companies are introducing a new complication into utility regulation. Under the laws of most of the states, these financing and management corporations are not subject to state control. Payments by operating to holding companies form an element of cost of operation which must be subjected to control if state supervision is not to lose its meaning and effect as a safeguard of the public interest. Governors Ely of Massachusetts, Tobey and Winant of New Hampshire, Roosevelt of New York, Pinchot of Pennsylvania, Moody of Texas, and La Follette of Wisconsin call attention to this problem and recommend appropriate legislation.

Governors Olson of Minnesota, Bryan of Nebraska, Roosevelt of New York, Meier of Oregon, Wilson of Vermont, and La Follette of Wisconsin recommend that these states develop their own water power resources rather than wait for private capital to undertake the enterprise. Moody of Texas would prevent the alienation of public water power resources. Olson of Minnesota, Caulfield of Missouri, and Meier of Oregon suggest legislation to require permits from the state for the building of dams across interstate streams.

Governor Olson also suggests that the federal government, in its canalization of the upper Mississippi, use the water power thus im-

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pounded for the generation of electricity for distribution to adjacent cities. Meier of Oregon visualizes a similar development on the Columbia River at Umatilla Rapids, and Governor Balzar of Nevada commends the Boulder Dam project for similar reasons.

The propaganda of the electric utilities comes in for special condemnation at the hands of La Follette of Wisconsin. Pinchot of Pennsylvania is making the breaking of the political influence of the power trust and its control of the state utility commission his first order of business in carrying out his campaign pledge to the people for fair utility rates. He would abolish the commission and establish a fair-rate board elected by the people.

More adequate regulation and higher taxation of motor vehicle common carriers is recommended by thirteen governors—Graves of Alabama, Parnell of Arkansas, Leslie of Indiana, Woodring of Kansas, Gardiner of Maine, Brucker of Michigan, Caulfield of Missouri, Weaver of Nebraska, Seligman of New Mexico, Shafer of North Dakota, Halloway of Oklahoma, Moody of Texas, and Wilson of Vermont. Meier of Oregon advocates the repeal of the "certificate of convenience and necessity" act.

Two governors, Winant of New Hampshire and Shafer of North Dakota, view with alarm the recent announcements of the Interstate Commerce Commission looking to the consolidation of railroads into major trunk-line systems. Both fear stifled competition and resulting loss of service and increased rates. Bulow of South Dakota recommends the abolition of the state railroad commission, as an agency which has outlived its usefulness. He suggests that a rate expert in the attorney-general's office could handle all rate questions satisfactorily and with greater economy.

Federal-State Relations. The usual executive complaints about federal encroachment on state sovereignty are conspicuously absent from the 1931 messages. It is quite likely that recent federal appropriations for drought and unemployment relief have been sufficiently popular in the states to make criticism of the federal government dangerous. It is interesting to note, after such vigorous denunciations as those of 1925, 1927, and 1929, how eagerly the governors are now looking to the federal government for aid. Emmerson of Illinois speaks enthusiastically of federal aid on the Illinois waterway, although in the next breath he denounces federal interference with railroad rate-making. Christianson of Minnesota commends federal enterprise in

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developing the upper Mississippi River for navigation, and suggests federal generation and distribution of electric power. Balzar of Nevada frankly gives credit to the federal expenditures in Nevada (for the Boulder Dam and Naval Ammunition Depot) for alleviating the depression and unemployment. Ross of Idaho asks more federal irrigation work. Rolph of California promises coöperation with the federal authorities on irrigation and reclamation projects. Meier of Oregon is optimistic about the possible federal dam and canal on the Columbia River at Umatilla Rapids—referring to it as "the Boulder Dam of the North." Shafer of North Dakota and Green of South Dakota look with longing eyes toward Washington for aid in the development of the upper Missouri River for navigation. Bryan of Nebraska suggests federal aid for irrigation projects in the western part of his state.

Memorials to Congress are proposed. Some have already been mentioned. Others include requests for the passage of the Muscle Shoals bill, the McNary-Haugen bill, and the Norris resolution, proposed by Bryan of Nebraska, and for application of the immigration quota law to immigrants from Mexico, suggested by Hunt of Arizona.

Seligman of New Mexico and Meier of Oregon recommend the ratification of the child labor amendment. Roosevelt of New York asks for a state constitutional amendment to permit referenda on the adoption of amendments to the constitution of the United States. Evidently he is not familiar with Ohio's experience in this connection.[8]

Old Age Pensions. Ten governors (Green and Brucker of Michigan, White of Ohio, Ross of Idaho, Meier of Oregon, Hunt of Arizona, Buck of Delaware, Cross of Connecticut, Pinchot of Pennsylvania, and Olson of Minnesota) recommend the adoption of old age pension laws. Two others (Murray of Oklahoma and Bryan of Nebraska) recommend a study of the problem. Roosevelt of New York feels that such pensions should be made contributory. Ely of Massachusetts asks that the age of beneficiaries under the existing act be reduced. Emerson of Wyoming asks that the law in that state be made effective by adequate fiscal provisions.

Elections. Governor Leslie of Indiana asks for the repeal of the primary law. Ross of Idaho, on the other hand, recommends that the primary be extended to state and district offices. Hunt of Arizona and La Follette of Wisconsin suggest that any candidate receiving a

[8] See Hawke v. Smith, 253 U.S. 231.

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majority of all the votes cast at a primary should be declared elected. Olson of Minnesota would change the state-wide primary from a closed to an open one. Bryan of Nebraska asks for an amendment of the primary law to avoid a repetition of the Norris episode. Norblad of Oregon would eliminate the long period between the primary and the election in his state by moving the primary date down to September. He also advocates the elimination of the numbering of the names of the candidates on the ballot, claiming that it aids the political machines to use the ignorant voter. Permanent registration is recommended by Caulfield of Missouri and Ross of Idaho. Bryan of Nebraska would remove the party circle from the ballot.

Commissions to revise the election laws were reported to be at work in Michigan and Illinois. A proposed new code was submitted by Pinchot in Pennsylvania, as one blow against election frauds in Philadelphia. Hunt of Arizona recommends a general revision of the primary and election laws. Ely of Massachusetts asks for a short ballot for the state government by making several offices now elective appointive by the governor. Ross of Idaho points out that although the voters had adopted a constitutional amendment providing for the initiative, referendum, and recall, only the initiative had ever been made effective by legislation. He asks that this law be changed to permit the approval of initiated measures by a majority of those voting on the question, and that the referendum and recall provisions of the constitution be made effective.

Conclusion. Lack of space forbids a consideration of many topics, such as the judiciary, court procedure, public land policies, and others. A few striking features must suffice for a conclusion; to attempt a summary would be like trying to epitomize a dictionary.

One oft-repeated phrase cannot be neglected. Many governors suggest that contracts and employment should be limited to citizens of their state, and that the people should become "state conscious" to the extent of buying only products made in the state, where these are available. This infantile and wholly indefensible policy is advocated not only by newly chosen chief executives, but also by many whose experience should have taught them better economics. No state in our Union—yea, not even the Union itself—is sufficient unto itself. Business defies state lines—even international boundaries. Economic progress lies, not in developing at high cost in ill-adapted locations new ventures designed to aid a state or nation to achieve self-suf-

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ficiency, but in encouraging the fullest development of every industry at its most advantageous center from the standpoint of raw materials and distribution of the finished product. And that is what is going to happen in the United States and in the world, all the speeches of governors and secretaries of chambers of commerce to the contrary notwithstanding. The tariff may modify these economic laws somewhat; but certainly, with federal control over interstate commerce, no such legal fiat can set up barriers at state lines. Even such a wish as is expressed in the messages is the embodiment of local selfishness at the expense of national and public welfare.

Two governors (Buck of Delaware and Bryan of Nebraska) advocate public sale of gasoline to afford competition. Shafer of North Dakota reports the success of that state's mill and elevator and state bank. Bryan of Nebraska advocates the establishment of a state bank as an alternative to the reënactment of the bank guaranty law.

Gardner of North Carolina recommends a constitutional convention. Murray of Oklahoma suggests the creation of a citizen commission to recommend amendments to the constitution, as did Byrd in Virginia. Ritchie of Maryland comments upon the approval by a small vote of a proposal for a convention in that state, pointing out that there is a question as to the sufficiency of this approval, as some maintain that a majority of those voting at the election is required. The legislature may resolve this difficulty by enacting legislation to call the convention. Hunt of Arizona would avoid the end-of-the-session rush by eliminating the sixty-day limit on pay of members, or by a split session. Erickson of Montana suggests a reduction in the size of the legislature. More bizarre than most is the suggestion of Murray of Oklahoma that legislators be insulated from the lobby and other sinister influences by building a legislative dormitory near the capitol where the members would be required to live during the session. La Follette of Wisconsin would provide machinery similar to the legislative council of the Model State Constitution to frame legislation during recesses of the legislature. Cross of Connecticut asks for a strengthening of the veto power by requiring an extraordinary majority of the legislature to overrule, instead of a simple majority as at present. He also desires a longer time after the adjournment of the legislature to consider bills passed in the closing hours of the session.

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Legislative Pardon for Impeachment in Texas. On September 25, 1917, the senate of Texas, sitting as a court of impeachment, pronounced against Governor James E. Ferguson the judgment of removal from office and disqualification to hold office in Texas. Eight years later, Mrs. Miriam A. Ferguson,wife of the impeached governor, occupied the gubernatorial chair, and at her urging the legislature passed an amnesty act undertaking to absolve all persons against whom any judgment of conviction had been theretofore rendered by the senate in any impeachment proceedings from such judgment and the effects and consequences thereof. Before its passage, the attorney-general ruled that the measure was unconstitutional; and the succeeding legislature repealed it.[1]

It was contended by ex-Governor Ferguson that the passage of the amnesty act and his compliance with its provisions had operated to terminate the effect of the senate's judgment as to his eligibility for office; and in April, 1930, he filed an original petition for mandamus in the supreme court to compel the state Democratic executive committee to certify his name for a place on the Democratic ticket as a candidate for governor in the July primary.

Two of the regular members of the supreme court disqualified themselves, and Governor Moody appointed special justices in their places. On May 23, 1930, the court unanimously ruled that the amnesty act was unconstitutional.[2] Disregarding the briefs and arguments of counsel concerning the history, legislation, and judicial decisions relating to impeachment, the court found the solution of its problem in the provisions of the state constitution. The pardoning power, it pointed out, is by the constitution (Art. IV, sec. 11) conferred upon the governor; but the constitutional provision positively excepts impeachment from the pardoning power of the executive. Where the constitution grants a power and prescribes the means for its exercise, such means are exclusive of all others. Had the constitutional convention intended that an officer convicted of impeachment should be subject to pardon by the legislature, or by any other department of the government, it would have provided accordingly. In a previous decision, the court had held that where the constitution declares qualifications for office, it is not within the power of the legislature to change or add to these

[1] See this *Review*, Vol. XXIV, pp. 653-658 (August, 1930).

[2] *Ferguson* v. *Wilcox et al.*, 28 S.W. (2d) 526-536 (1930).

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qualifications.[3] If the legislature cannot add to the qualifications, it undoubtedly may not take away disqualifications, provided by the constitution. In the trial of impeachment cases, the senate is a court of original, exclusive, and final jurisdiction, whose judgment of impeachment can be called into question only for lack of jurisdiction or excess of constitutional power[4] No express or implied power can be found in the constitution authorizing the legislature to nullify the judgment of the senate in case of conviction of impeachment.

Overruling a motion for rehearing, the court said: "The disqualification to hold office in Texas by one who has been impeached is in keeping with the governmental policy of this and the other states of the United States."

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[3] *Dickson* v. *Strickland*, 265 S.W. 1012, 1015 (1924).
[4] *Ferguson* v. *Maddox*, 263 S.W. 888 (1924).

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JUDICIAL ORGANIZATION AND PROCEDURE

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The Course of Judicial Review in the State of Ohio. The first constitution of Ohio was framed in 1802, and was not submitted to popular vote for approval. Fashioned by followers of Thomas Jefferson, the new government had as its cardinal principle the doctrine of legislative supremacy. With no power over patronage, and with the veto power denied to him as well, the governor was but a "shadow executive." Since the judges were appointed by the legislature for the limited term of seven years, the judiciary also played a subordinate rôle.

Although the fundamental character of the constitution was conceded, it was a question in the mind of many as to who should determine the nature and scope of that instrument.[1] To ardent Jeffersonians, this matter presented little difficulty; in their judgment, the legislature was fully competent to settle any question that might arise as to the nature of the constitution.

The first legislature under the new constitution met in 1803. Many members of the body had served in the constitutional convention of 1802; in fact, one-third of the members of the convention were elected to the first General Assembly of the state, and the leaders of the convention became leaders in the legislature as well. These men were not greatly impressed with the idea that their work in the convention in one year should control them in the legislature the next year.

The Federalist sympathizers in this first legislature, who were in the minority, had an altogether different idea as to the proper merits of the opposing principles of legislative supremacy and judicial review. Before the year was over, this group was to receive considerable encouragement from the Federalist chief justice of the United States Supreme Court, John Marshall, who, in the case of Marbury v. Madison,[2] asserted the proposition that a constitution is fundamental law, that legislative and executive powers are limited by this fundamental law,

[1] *Journal of the Senate of the State of Ohio: First Session of the Legislature, held under the Constitution of the State, A.D. 1803, and of the United States the Twenty-seventh* (Chillicothe, 1803), I, pp. 1-110.

[2] 1 Cranch 137 (1803).

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and that the courts, as interpreters of the law, must preserve and defend the constitution.[3] This principle had already been adopted in a number of states. Stimulated by Marshall's opinion, it was shortly thereafter accepted in many more.[4] Ohio may be included in this latter group.[5] Her first case of judicial review was in 1806.

In that year, Calvin Pease, sitting as presiding judge of the common pleas court in Belmont and Jefferson counties, was called upon to decide cases arising under a statute passed by the legislature in 1805 relating to justices of the peace. In deciding these cases, Judge Pease held certain sections of the statute to be in conflict with the constitution of the United States and of the state of Ohio, and therefore null and void.[6] The decisions by Judge Pease aroused great opposition. When the legislature convened in 1806, the question of bringing articles of impeachment was strongly considered. After extended deliberation, however, the matter was dropped.

In August, 1807, the same law that had evoked the Pease decision came before the supreme court of Ohio in the case of Rutherford v. McFaddon.[7] In this proceeding, the court for the first time asserted the right of invalidating an act of the legislature on the ground that it was unconstitutional. The judges sitting in this case contended that judicial review was a natural outgrowth of two principles—the separa-

[3] The opinion of Marshall did not lay down a doctrine that was new. The principle that an act of legislation contrary to the law under which a legislative body is organized is invalid was familiar in this country long before the Constitution was adopted. Before the Revolution, colonial legislation was frequently subjected to review by the Privy Council, and both before and after the adoption of the federal Constitution, state courts in a number of states had held state statutes in conflict with state constitutions to be invalid. Arthur M. Schlesinger, "Colonial Appeals to the Privy Council," *Political Science Quarterly*, XVIII, 279, 433. *Cf.* Charles G. Haines, *The American Doctrine of Judicial Supremacy;* Charles Warren, *The Supreme Court in United States History.*

[4] By 1818, the power of the courts to pass upon the constitutionality of legislation was recognized in every state but Rhode Island, and the courts were largely following the lead of Marshall in proclaiming the independence of the judicial department.

[5] The doctrine of judicial review, as stated by Justice Woodbury of New Hampshire in 1818, came to be the rule adopted in every state. See Merrill v. Sherburne, 1 N. H. 204.

[6] *Western Law Monthly*, Vol. V, p. 4 *passim* (June, 1863).

[7] The reported cases of the supreme court of Ohio do not antedate 1823, the year when the sessions *en banc* were inaugurated. However, the opinion in the case of Rutherford v. McFaddon was printed in the *Scioto Gazette* and reprinted in the *Liberty Hall* and *Cincinnati Mercury*, Nov. 3 and 10, 1807. See also *House Journal of the Seventh General Assembly*, 123.

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tion of powers and the recognition of a written constitution as the supreme law.[8]

The next legislature met in December, 1807. Headed by Thomas Worthington, an investigating committee reported a resolution "that the judges of this state are not authorized by the constitution to set aside any act of the legislature by declaring the law unconstitutional or null and void."[9] This resolution was approved by the House, but did not pass the Senate. In 1808, the court question was perhaps the chief issue between Samuel Huntington, the chief justice, and Thomas Worthington, rival candidates for governor. Huntington, with Federalist support, was elected. The anti-court Republicans, however, were in the majority in the General Assembly, and reported articles of impeachment against Judges Tod and Pease.[10] They, however, failed by one vote to secure the two-thirds necessary for removal.[11]

The year 1809 brought an attack from another angle. By provision of the constitution of 1802, many appointive offices, including judgeships, were for terms of seven years. The original commissions were issued in the spring of 1803. It was generally understood that a number of vacancies were to be filled by the legislature in 1810. But when the legislature of 1809-10 met, a resolution was passed declaring that the constitution was to be interpreted as vacating *all* seven-year appointments in 1810, not excepting cases in which the current incumbent had been appointed to fill a vacancy caused by the death or resignation of the original holder.[12] By use of this provision, the anti-court group, through its majorities in both houses, was able to reconstruct

[8] Judge Sprigg did not sit in the case, and the opinion was given by Judges Huntington and Tod. The opinion of Chief Justice Huntington sets forth most completely the position of the court, with Judge Tod supporting the position. It is of interest to note that Calvin Pease, George Tod, and Samuel Huntington were all natives of Connecticut. They practiced law in Connecticut for a time and were admitted to the Ohio bar at the same time. Judge Tod had been a student at Judge Reeves' famous law school at Litchfield, Connecticut.

[9] *Liberty Hall,* January 11, 1808. *House Journal of the Sixth General Assembly,* 43.

[10] *House Journal of the Seventh General Assembly.*

[11] In using the impeachment power as a weapon against the judiciary, the Ohio anti-court group followed the tactics of Jeffersonians in the national government. Since most state courts were under legislative control, the impeachment process was not employed. In Pennsylvania, however, the Jeffersonians used it.

[12] The term of Judge Pease, who was appointed in 1803, would have terminated in 1810 in any event; but Judge Tod had been appointed in 1806. Under the previous interpretation, the latter would have continued in office until 1813. Nevertheless, he was removed.

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the judicial personnel of the state.[13] This action was not, however, without serious consequences.[14]

The "sweeping resolution," as it was called, caused more excitement in Ohio than any other political event since the Aaron Burr conspiracy.[15] The division of opinion in the Jeffersonian ranks produced by the impeachment of the judges in 1808 was widened further, and many of the moderate Jeffersonians were driven into the ranks of the Federalists. To offset this movement, Tammany societies were organized in Ohio to strengthen the party; and in a short time, the Jeffersonians were divided into definite Tammany and anti-Tammany groups.[16] The matter rested there until these groups were finally reunited, when winning the war of 1812 became the overshadowing problem. With that problem before the country, the struggle over the courts subsided and the doctrine of judicial review gained recognition as a fundamental principle of government.

Although the power of judicial review was quite generally accepted after this period of conflict, it was a long time before it came to be exercised extensively. The supreme court was content to move slowly at first. In pursuing this careful policy, it followed the example of the Supreme Court of the United States and the high courts of other jurisdictions. Cases in which it assumed the power to act usually concerned matters involving the constitutional rights of the court itself.[17] The case of Ester Bingham v. Amos Miller, decided in 1848, is in point.[18]

The question presented here was the legislature's power to grant divorces. By special act, on March 3, 1843, the legislature granted Ralph

[13] As a result of the resolution, the three supreme court judges, three president judges of the common pleas courts, all the associate judges of that court (more than a hundred in number), and all of the justices of the peace, were removed at one fell swoop. Rufus King, *Ohio, First Fruit of the Ordinance of 1787* (1888), p. 314.

[14] *Western Law Monthly*, Vol. II, p. 1.

[15] For a complete and interesting account of the struggle in Ohio over judicial review, see William T. Utter, "Judicial Review in Early Ohio," *Mississippi Valley Historical Review*, Vol. XIV, pp. 3-26.

[16] William T. Utter, "Saint Tammany in Ohio; a Study in Frontier Politics," *ibid.*, Vol. XV, pp. 321-340.

[17] For a list of laws invalidated by the early courts, see Charles G. Haines, *The American Doctrine of Judicial Supremacy*, p. 288.

[18] 17 Ohio Rep. 445 (1848).

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Bingham a divorce from his wife Ester.[19] The defendant denied the legislature's power to grant such a divorce. She was sustained in this contention by the supreme court, which declared that the matter of divorce was by its very nature judicial, and, as such, not within the jurisdiction of the legislature.[20]

This case presents the type of problem which prompted the court to exercise judicial review. The power of the courts is involved. The supreme court will assert its power to assist the cause of the judiciary. In this particular case, it would seem that it is bent not only on protecting the existing powers of the judiciary, but on actually adding to them.[21]

Up to this time, however, critics of the judicial power had small ground for complaint. As a matter of fact, during the first half-century of statehood, there were only seven officially reported cases in which the Ohio supreme court declared acts of the state legislature invalid, in whole or in part, on constitutional grounds. Such restraint could not last forever.

In 1851, a new constitution was adopted which provided, among other things, for popular election of judges and stricter constitutional limitations. Encouraged to use their power more freely, the courts pro-

[19] 41 *Ohio Laws*. Nineteen divorces were granted at this session by the General Assembly.

[20] In arriving at this decision, Judge Reed did more than question the legislature's power to grant divorces. He boldly maintained not only that the legislature had assumed power not delegated to it, but that it had usurped powers expressly conferred by the constitution upon the courts. This view becomes one of more interest when compared with the statement made twenty years earlier by Judge Hitchcock in the case of Heirs of Ludlow v. Johnson, 3 Ohio 563 (1828). In that case, Judge Hitchcock held that the constitution actually conferred no specific jurisdiction upon the courts, but merely made them capable of receiving such jurisdiction at the hands of the legislature. This is an altogether different view from the one held by Judge Reed. A close examination of the books reveals that changes in the practices of the court between 1828 and 1848 agree quite closely with the change in the tone of the above assertions. This trend in Ohio is in keeping with a general movement taking place in our state governments during that period, in which a gradual readjustment between the legislative and judicial branches was being effected. See Arthur N. Holcombe, *State Government* (1926), pp. 109-143.

[21] The constitution of 1802 made no mention of where the power to grant divorces rested, and in practice the legislature had granted divorces from the beginning.

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ceeded to do so.[22] Since 1851, it is safe to say, the supreme court has declared acts of the legislature invalid in no less than 200 cases.[23]

A number of factors have contributed to this change of attitude. In the first place, there was an increase in the volume of state legislation. Then, too, a more favorable attitude toward the courts had developed. The legislature was blamed for several sad experiences encountered during the thirties and forties, when the state was going through a period of inflation. Losing confidence in the legislature, the people looked hopefully toward the judiciary. This attitude was not peculiar to Ohio.[24] It was apparent in all of the states. As a matter of fact, the Civil War period may be said to introduce a new era in many respects in American judicial history. From that time on, judicial power expanded rapidly the country over.[25] In Ohio, this activity increased rather than diminished with the passage of years.[26]

During the latter part of the nineteenth century, the agricultural economy of early Ohio gave way to a new urban, industrial order. A great mass of legislation was passed to meet the changing needs of the state. It was a trying time for the courts. Old landmarks lost their significance. Much of this new legislation demanded by an industrial society collided with the traditional constitutional and legal principles developed in an agricultural society. When, because of modern condi-

[22] See Joseph H. Hixson, *The Judicial Veto in Ohio* (master's thesis, Ohio State University, 1922), p. 23.

[23] Mr. Jackson H. Ralston, who has compiled a list of state laws held unconstitutional by state courts from 1858 to 1916, lists Ohio as having 132 laws declared unconstitutional up to 1916. Mr. Ralston makes no pretense to absolute accuracy. See *Study and Report for the American Federation of Labor upon Judicial Control over Legislatures as to Constitutional Questions* (1923), p. 91.

[24] Between 1790 and 1850, the United States Supreme Court held 32 measures unconstitutional; between 1850 and 1911, some 247.

[25] Whereas laws had formerly been invalidated by the courts to protect their own constitutional rights, they were now invalidated because of defective legislative procedure, or because of conflict with the "due process of law" clause of the federal constitution, or its equivalent in the state constitution. The growing complexity of state constitutions and the increasing number of limitations also encouraged judicial supervision over statutory enactments. Moreover, there arose a tendency in many quarters to construe constitutional limitations as limiting the legislative powers very strictly. See *Ohio Constitution*, Sec. I, Art. 20.

[26] It was the same elsewhere. In the brief span between 1903 and 1908, 400 state laws were held invalid by the courts, state and federal. Charles G. Haines, *The American Doctrine of Judicial Supremacy*, p. 307. All but 28 of these vetoes were by state courts.

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tions, a new policy such as a compulsory compensation law was adopted, there was a fair possibility that it would be held invalid by the courts as in violation of the state constitution. An amendment to the constitution was the only method of relief in such cases. When Ohio amended its constitution in 1912, it included a provision authorizing legislation with regard to mechanics' liens; a provision authorizing legislation fixing and providing for the comfort, health, safety, and general welfare of employees; a provision authorizing workmen's compensation; and a provision prescribing an eight-hour day on public work.[27]

The members of the constitutional convention of 1912 were not content to protect these newer types of legislation by constitutional safeguards. They were determined to limit the powers of the court to interfere with such legislation. This sentiment was encouraged by Theodore Roosevelt, who made a speech before the convention in which he advocated a system of control through the recall of judicial decisions.[28] Although generally sympathetic with the Roosevelt point of view, the convention was not prepared to accept his plan.[29] As a matter of fact, it had great difficulty in reaching an agreement on any of the plans proposed. One member suggested an amendment providing that the supreme court should have no right whatever to pass upon the constitutionality of legislative acts. Each department should be held responsible for its own acts, and should be prohibited from overlapping

[27] Unfavorable judicial decisions were responsible for the amendments dealing with mechanics' liens and hours of labor on public work. Laws concerning these matters had been annulled as contravening the broad guarantees of the Ohio constitution which compare to the "due process" clause in other constitutions. The other two amendments were added to prevent possible judicial annulment in the future. Two of the amendments expressly provided that no other provision of the constitution should restrain or limit the powers so granted. See Palmer v. Tingle, 55 Ohio St. 423 (1896); Cleveland v. Clement Bros. Cons. Co., 67 Ohio St. 197 (1902); Steele, Hopkins, and Meredith v. Miller, 92 Ohio St. 115 (1915) [bulk sales law], cited in Walter F. Dodd, *State Government*, pp. 125.

[28] *Proceedings and Debates, Ohio Constitutional Convention, 1912*, Vol. I, p. 385.

[29] In Colorado, Roosevelt's proposal was adopted during the same year in the form of a constitutional amendment authorizing the people, by the same procedure as that provided for the direct initiative, to order the enforcement of a statute which had been duly enacted by the legislature and approved by the governor, but held invalid by the Supreme Court. The provision was held unconstitutional by the state supreme court. *People v. Western Union Telegraph Co.*, 70 Colo. 90 (1921); *People v. Max*, 70 Colo. 100 (1921).

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or overriding the work of another department. The initiative and referendum provided for in the constitution should be used to pass upon the constitutionality of legislative acts. This member was vigorously opposed to any scheme whereby unconstitutionality should be determined by any other power than the people. This plan was rejected, however, as were several others.

After much deliberation, a proposal was adopted by the convention which provided that "no law should be held unconstitutional without the concurrence of all but one of the judges, except in the affirmance of the judgment of the court of appeals declaring a law unconstitutional."[30] The supreme court was further limited by making the court of appeals very largely a court of final appeals.[31] However, in cases of public or general interest, the supreme court might, within such limitation of time as might be prescribed by law, direct any court of appeals to certify its record to the supreme court, and might renew and affirm, modify or reverse, the judgment of the court of appeals. This plan was accepted by the people of Ohio, and is in effect today.

Unfortunately, the plan of permitting a minority of the court to control has not proved altogether satisfactory. The supreme court has expressed its impatience with this limitation on several occasions, and with very good reasons. Due to the strictness of the requirement, the majority of the court is forced to permit decisions to be handed down which are contrary to its convictions; or members of the minority are

[30] In 1914, a similar plan was submitted to the people of Minnesota. It was approved by a majority of those voting on it, but failed of adoption because of the failure of a majority of all those attending the polls to vote for it, as required by the state constitution. In 1918, a constitutional amendment was adopted in North Dakota providing that "in no case shall any legislative enactment or law of the state of North Dakota be declared unconstitutional unless at least four of the judges shall so decide." Since North Dakota has only five judges, this is much the same as the Ohio provision. In 1920, Nebraska adopted a constitutional amendment requiring the concurrence of five of its seven judges. See R. E. Cushman, "Constitutional Decisions by a Bare Majority of the Court," *Michigan Law Review*, XIX, 771-803 (1921).

[31] One of the delegates made an examination of cases in the Ohio State Reports from 63 Ohio State to 84 Ohio State, with the purpose of finding the number of cases where individual interest came in conflict with a corporation interest, and where the individual received a favorable decision in the circuit court, only to have this decision reversed in favor of the corporation in the supreme court. He found thirty-three such cases. *Proceedings and Debates, Ohio Constitutional Convention, 1912*, Vol. II, pp. 1092-1101.

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forced to concur with the majority to make the real opinion of the court effective.[32] Since the adoption of the constitutional provision, there have been nine clear cases of minority control of the decision of the court.[33] Other cases might be mentioned, but without complete assurance.[34] Cases of minority control seem to be on the increase. A survey of the supreme court reports shows one such case in 1918, one each in 1923 and 1925, four in 1927, and two in 1929.

In four cases of minority control, the action of the court was determined by three judges; while in five cases, two members of the court controlled its action. In the course of a recent decision of this sort, the court said: "While members of the court deplore such a constitutional provision, one which permits judicial control over grave constitutional questions by a minority vote, the fault lies, not in the court, but in the constitutional provision which produces such a result.[35]

In 1930, a case came before the United States Supreme Court testing the validity of this provision.[36] It was attacked as violating those sections of the federal constitution which provide for due process of law and equal protection of the law. It was also argued that the provision denied the state of Ohio a republican form of government as guaranteed by the federal constitution. The Supreme Court swept

[32] This discussion is based on a study made by Mr. W. Rolland Maddox, of the University of Michigan. See W. Rolland Maddox, "Minority Control of Court Decisions in Ohio," in this *Review*, Vol. XXIV, pp. 638-648 (Aug., 1930)

[33] Barker et al. County Commissioners v. City of Akron, 98 Ohio St. 446, and 121 N.E. 46 (April 2, 1918); DeWitt v. State *ex rel* Crabbe, Attorney General, 108 Ohio St. 513, and 141 N.E. L51 (Nov. 13, 1923); City of East Cleveland v. Board of Education, 112 Ohio St. 607, and 148 N.E. 350 (May 26, 1925); Fullwood v. City of Canton, 116 Ohio St. 732, and 158 N.E. 171 (March 29, 1927); Myers v. Copelan, Chief of Police et al., 117 Ohio St. 622, and 160 N.E. 855 (Oct. 26, 1927); State *ex rel.* Jones v. Zangerle, Auditor, 117 Ohio St. 507, and 159 N.E. 564 (Dec. 21, 1927); State *ex rel.* Williams v. Industrial Commission of Ohio, 116 Ohio St. 45, and 156 N.E. 101 (March 8, 1927); State *ex rel.* Bryant v. Akron Metropolitan Park District for Summit County et al. 166 N.E. 407 (Mar. 27, 1929); Shook et al. v. Mahoning Valley Sanitary District et al., 166 N.E. 415 (March 27, 1929).

[34] Morton v. State of Ohio, 105 Ohio St. 366, and 138 N.E. 45 (1922); Royal Green Coach Co. v. Public Utilities Commission, 110 Ohio St. 41, and 143 N.E. 547 (1924).

[35] State *ex rel.* Jones v. Zangerle, Auditor, 117 Ohio St. 507, and 159 N.E. 564 (1927). For further criticisms, see *Ill. Constitutional Convention Bulletin* (1920), pp. 857-858.

[36] Bryant v. Akron Metropolitan Park District, 281 U.S. 74.

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aside all of these contentions. It held that the right of appeal to a higher tribunal is not required by due process of law, and that the state was therefore free to impose any restriction upon appeals to the state supreme court which accorded with its view of public policy.

The claim that the provision denied equal protection of the law was based on the fact that a state statute might be held valid in a case arising in one county of the state and invalid in another, depending upon whether the decision of the supreme court happened to affirm or reverse the decision of the court of appeals. Chief Justice Hughes pointed out, however, that there is no requirement of the federal constitution that a state shall adopt a unifying method of appeals which will insure to all litigants within the state the same decisions on particular questions that may arise. The Court ruled out the argument based on the supposed destruction of the guarantee of a republican form of government, on the ground that it was a political question.

From all appearances, this provision of the Ohio constitution will remain in effect for some time to come. Although hampered by the restrictions of 1912, the power of the supreme court in relation to the other branches of the government remains essentially unimpaired. Although the balance of control within the court may have shifted, and some curious results are undoubtedly produced, the power of judicial review in Ohio retains practically the same form and strength that it possessed during the days of its growth. At least, the coördinate position of the judiciary among the several branches of the state government remains unchallenged.

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Nature and Aims of the National Socialist German Labor Party. The last election to the Reichstag brought the unexpected and rather extraordinary rise of the National Socialist German Labor party from twelve to 107 seats. It is the party of the extreme right. In nationalistic radicalism, it compares with the German National People's party, led by Hugenberg, much as in social radicalism the Communist party compares with the Social Democrats. Until recently, the National Socialists could be passed over as a negligible group of fanatics. But the party's present importance as the second strongest in the Reichstag, and the contradictory and confused ideas that are current about it, make worth while some inquiry into its nature and the causes of its rapid advance.

To start with, the party differs from its rivals in that personal leadership and military discipline are at its foundations. Besides having contributed more than any other single man to the building up of the party, Adolf Hitler is also its leader in the strictest sense of the word. A few facts about his life may show how it was that he could become the exponent of so large a number of German people.

Hitler was born in Austria in 1889 and until his fifteenth year lived in modest bourgeois surroundings, his father being a lower state official. This explains why he always has been, and still is, at heart a man of the middle classes. After the death of his parents, he was forced to earn his living as an unskilled laborer, and for some five years he lived the life of a proletarian among proletarians, completely cut off from his former middle-class environment. During this experience, he developed an attitude of rebellion against what he considered the injustice of our social structure. At the same time, his middle-class background caused him to oppose the solution which Marxian socialism offered. He explains that he thought it preferable to lift the proletarians into the middle class, rather than to level the whole population down to the proletarians. Also, the ideal of an international brotherhood seemed to him vague and objectionable. Through his study of history as a boy (in his autobiography he speaks of his history teacher as one above the average), he had come by the conviction that individual, national states are preferable to internationalism. Instead, then, of becoming an adherent of the teachings of Marx, he worked his way back into the middle classes.

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Here is one reason why Hitler could become the exponent of a large number of Germans today: the middle classes, who lost most of what they possessed during the war and the inflation period, begin to realize that, economically speaking, they are proletarians; since they have not much to lose, they might as well join the Socialists or the Communists. But they rebel against being proletarianized; they struggle to maintain their middle-class ideas and ideals in spite of the changed economic situation. They are searching for a way in which this can be accomplished. Since their experience is similar to that of Hitler, they feel drawn to the solution which Hitler has worked out.

A further factor increases Hitler's identification with a large number of Germans. When the war broke out, Hitler, who at that time lived in Munich, entered the German army and fought with deep conviction until 1918. After the armistice, he was one of the many who believed that the revolution—that is, as he says, Marxism—had broken the back of the victorious army, and who for this reason, and because it tried to relegate him to the shelf, opposed the new republican and democratic régime. There is a large number of people who, like Hitler, resent the belittling of their efforts during the war, and to whom it would mean moral death if they came to believe that the sacrifices during the war were made for an illusion. By affirming Germany's past, and especially the war, Hitler has not only the large officer and ex-officer caste on his side, but also a considerable section of the non-proletarian masses.

Linked up with his hatred of Marxism is Hitler's prejudice against the Jews. In Vienna, he came in contact with the worst representatives of the Jewish race, i.e., Eastern Galician Jews—which may explain his extreme dislike of all Jews. In his autobiography, he rationalizes his anti-semitism by giving as its explanation the "poisonous" Jewish teachings of Marx, and the fact that the leaders of the Socialists and of the Socialist press were Jews and did great harm to the national life of Austria. How much of Hitler's anti-semitism is real, and how much is a convenient means of propaganda, is difficult to determine.

Hitler, then, is a middle-class man, who for a time had been swallowed up—though only economically—by the proletariat; he is a soldier, a nationalist, and a convinced militarist; he stands for leadership, authority, and discipline.

As has been said, Hitler is something of a military leader of his party. So far, in spite of signs of insubordination, he has been able

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to maintain himself as the undisputed leader. His word is supposed to be law for the party members. The 107 National Socialist delegates to the Reichstag had to swear allegiance to him. They did not elect their leader in parliament, as is the custom, but Hitler appointed him. In Thuringia, the National Socialists obtained control of the government, and it was Hitler who chose the man (Dr. Frick) that for some months filled the post of minister of the interior and education. For a time it seemed probable that they would gain control of the government of Saxony; and Hitler went so far as to designate the Reichstag delegate, Gregor Strasser, to fill the post of minister of the interior in that state. These are merely a few examples of the absolute power which he seems to exercise within his party.

There is no doubt that Hitler has a talent for organizing heterogeneous elements and for holding them together. He has proved it by the fashion in which he built up the party, and by the way in which he has thus far guided it. He joined the German Labor party in 1919, as its seventh member, quickly took over the leadership, filled the embryonic party wholly with his ideas, and built up its organization after the pattern of the Bolshevik party in Russia. Munich was made the headquarters, and from there the organization radiated by means of the cell system. The only German party which until that time had been able to build up a strong and extensive party machine had been the Social Democrats. According to the Socialists themselves,[1] the National Socialist party now is in possession of a machine, which, though not as firmly knit and tested in battle, is more extensive, especially in the agricultural districts, where the Socialists have not succeeded in gaining a foothold.

Along with this party machine exists a military organization, the so-called "S.A.," that is, *Sturm-Abteilungen,* or storm troops, the purpose of which is to protect National Socialist meetings against the Communists and the Socialists. The organization has its own regional leaders; and at the head both of these and of the political leaders of the party machine stands Hitler. From its founding in 1920, the S.A. was strongly permeated with the putschistic military elements of the German army. After the war, a number of secret military organizations sprang into being, consisting mainly of ex-officers whose aim it was to overthrow the republic. Since Hitler's objective was

[1] Gesellschaft, VII, Jahrgang, No. 6, June, 1930.

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similar, they worked together.[2] Some of the ex-officers trained Hitler's storm troops, at the same time trying to withdraw them from Hitler's influence, thus getting a lever by which pressure could be brought to bear upon him. In the abortive Hitler-Ludendorff *putsch* of 1923, they played a rôle that is as yet obscure. During the years after the *putsch,* these same elements in the S.A. again tried to control the political leadership, and continued to aim at a forceful overthrow of the government. But Hitler, possessing a sounder political sense than his military co-workers, felt that after one futile *putsch,* only a very successful one would be forgiven; and for such a one, times seemed not propitious. Hitler, therefore, since 1924, has struggled for ascendancy over the S.A. leaders, and so far seems to have maintained his control over them. A few months ago there was something resembling a showdown: parts of the S.A. rebelled in Berlin, stormed the National Socialist offices, and insulted the North German leader, Dr. Josef Goebbels. The rebels were expelled from the party, and the ex-officer von Pfeffer, who until then had held the supreme command of the S.A. under Hitler, was forced to give up his post, which was assumed by Hitler himself. One may conclude, therefore, that, for the present at least, Hitler has control over the elements that are looking toward a *putsch*. It remains to be seen whether, if he wishes to continue his legal and non-violent course in the future, he will be able to govern this extreme right wing within his party.

As to the rank and file of the S.A., how far they are being trained with a view to revolutionary ends remains a matter for speculation. Two hours' training a week will hardly create a body able to withstand a regular army. But the S.A. satisfies a German craving for marching, sharp commands, group action, just as football satisfies similar desires among Americans. A large number among the S.A. are young people, which substantiates the National Socialist assertion that their movement appeals to the German youth.

Besides the S.A., whose members are recruited mainly from the lower middle classes, there are a number of National Socialist organizations exclusively devoted to the younger part of the population. The National Socialist student organization, at the beginning of 1930, counted some 30,000 members. Judging from their actions and publi-

[2] One of the officers, a leader of the secret "Organisation-Consul," Karl Tillessen, is supposed to have said of Hitler: "He is the born demagogue for our aims."

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cations, they are a group of idealists, full of a somewhat romantic enthusiasm for the "Third Reich"[3] and for everything one hundred per cent German. Nationalism and anti-semitism are especially stressed; while the socialist aspect of the movement, on the whole, makes less appeal. In selecting out of the National Socialist program only that which is most congenial to them, the students follow the majority of the National Socialist members and voters.

One would think that if one wished to acquaint oneself with the aims of the party, one would primarily have to study its program. Curiously enough, many voters on the day of the election, and many people who necessarily have become interested in the party since the election, did not know, and even yet do not know, that the National Socialists have a program. Again, many of the voters who knew the program were opposed to at least a portion of it, and yet voted for the party. When asked to explain this inconsistency, they said that the National Socialist party is a movement that as yet has no firm foundation of principles, but that its core is sound; that it expresses "the general will;" that it is an awakening of national energies directed toward shaking off, or somehow escaping, the hopeless existing situation and the still more hopeless future; that the movement, which has a large store of idealistic enthusiasm and a spirit of sacrifice, must be allowed to crystallize its principles as it goes along; that it was not the program which drew the voters, but misery and hopelessness, and the will to overcome them.

Others, again, say that they know the program, and that they will die for it,[4] that unity among the German states and classes can be achieved only if the good of the whole is put above the good of the individual; that Marxian socialism, communism, and big business are international, and on that account (as well as because they foster war

[3] The "Third Reich" is a conception somewhat resembling the millennium. After Germany has emerged from all the consequences of the lost war and the revolution, and when it enters upon a new road of glory, the Third Reich will begin. The First Reich was the Germanic Empire of the Middle Ages; the Second Reich began in 1871; the present situation is only an interval without name, and will be followed by the Third Reich.

[4] In explanation of this fanatical attitude on the part of some National Socialists, it may be noted that the last paragraph of the program reads as follows: "The leaders of the party promise to support and carry out the foregoing planks, if necessary, at the risk of their lives." Gottfried Feder, *Das Programm der N.S.D.A.P. und seine weltanschaulichen Grundgedanken*, p. 10.

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between the classes) are barriers to national unity; that the party's program, by stressing the fight for social justice on a national instead of an international basis, will be a means of uniting all conflicting interests within Germany.

One is safe in assuming that a large majority of the almost six and one-half million voters were not intimately acquainted with the program, or at any rate not with all of its implications. They voted National Socialist because they were promised a way out of the present situation. Nevertheless, though the program may be of secondary importance, it is interesting if for no other reason than as showing how the party already has changed some of its principles by means of interpretation.

In 1920, when the party was in its infancy, Hitler placed his coworker, Gottfried Feder, in charge of all the program-making. In 1926, the resulting program was declared by a general meeting of the party members to be "unchangeable." In the introduction to it, Feder asserts: "Our aim is the renewal of our nation *(Volk)* racially, politically, economically, and culturally. Our battle is devoted to the liberation of our nation." For the sake of greater definiteness, one might add: "liberation from Versailles, Reparations, and Marxism."

Judging from the writings, speeches, and actions of the National Socialists thus far, this declaration is the one really fundamental and unchangeable principle. All of the planks of the program are of secondary importance and only a means to this one end. Notwithstanding the proclamation that the program is unchangeable, it no doubt will be changed to fit shifting occasions. In their public speeches at the very frequent mass meetings, Hitler and the other leaders say openly that they are fighting for social justice[5] as a means of uniting the classes and making them feel, above all, that they are Germans. They also frankly say that they will not allow theory to hamper them.[6] They admit that the program is raw and unfinished; but they add that

[5] By "social justice," the National Socialists do not mean either the eighteenth-century slogan "all men are born free and equal," or the nineteenth-century "everything for everybody." They maintain, with Plato, that social justice consists in recognizing superior and inferior ability, and in having each person fill a place for which his character and talents fit him. In other words, though National Socialism appeals to the masses, it is fundamentally aristocratic.

[6] "One has to be strong enough to throw theory overboard if it does not fit life." Dr. J. Goebbels, in his paper, *Angriff*, Oct. 12, 1930.

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its "spirit" is clear and unmistakable, and that this spirit will be a sufficient guide in the program's interpretation. As far as an outsider can determine, the spirit is best expressed in Feder's introduction quoted above, and in the National Socialist flag: a red field standing for social justice, a white center standing for nationalism, and a black swastika denoting racial purity or anti-semitism. The colors are, intentionally, those of imperial Germany. The emphasis placed on "spirit" shows how very fluid the whole movement still is.

The program, like the name, of the party is half nationalistic and half socialistic. Important among the nationalistic planks is the demand for a greater Germany, including Austria and all Germans living along the border under a foreign sovereignty—to be attained under the principle of self-determination. A further demand is the cancellation of the treaties of Versailles and St. Germain. The parliamentary system of government is opposed; and citizenship is to be earned through service to the nation. Only Germans should be citizens; Jews and other foreigners must be excluded. Another demand is the abolition of the present paid army and the restoration of an army such as Germany had before the war, with universal and compulsory service. The party further demands a strong central power in the Reich, in order to do away with the particularism of the individual states—a policy which, however, has already been interpreted to allow the individual states to retain large autonomy in administrative and cultural matters. Instead of the present democracy, the principle of "Germanic democracy" is to be applied to the government; that is, the leader—either monarch or president—is to be chosen by all, but, once chosen, his authority is to be absolute. With regard to the question of whether the "Third Reich" is to be a republic or a monarchy, Hitler and the other leaders have many times stressed the point that they do not care what the form shall be. If conditions are such that a monarchy would be most satisfactory, the Third Reich will be a monarchy; if not, then it will be a republic. But in any case, it will not be a parliamentary democracy ruled by a coalition of parties.

One sees that the National Socialists do not content themselves with half-way demands. Their territorial claims would upset the map of Europe; for, besides the union of Austria and Germany, they work for the return of the German parts of Czechoslovakia which lie along the border of Germany; for those parts of Alsace, Lorraine, Belgium, and Denmark that wish to return; and for the pre-war eastern bound-

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ary. But here again one must note the tendency to opportunism: the Tyrol, which certainly should be one of the territories to be returned by the abolition of the treaty of St. Germain, is not mentioned. Hitler's idea is that Germany should cultivate friendship with Italy and England. Therefore he refrains from mentioning the Tyrol; and when asked not to forget the Tyrolese, he writes that for their sake the destiny of a much larger number of Germans living under foreign sovereignty must not be endangered.

Without a large army to back up their demands, the National Socialists do not expect consideration for their wishes. They have no faith in disarmament conferences; and they abominate the League of Nations as being an instrument under the control of France, which seeks to maintain the status quo. Hence the demand for a large army.

As regards the union of Austria and Germany, it is of interest to note that the leader of the Austrian *Heimwehr,* Prince Starhemberg, is now minister of the interior. According to him, the aim of the *Heimwehr* movement is the conquest of Marxism, the liberation of Austria from class war, and union with Germany.[7] One will note that the *Heimwehr* program fits in with that of the National Socialists. Furthermore, Prince Starhemberg, like Hitler, has decided to desist from a *putsch,* and to gain power by legal methods. How much actual coöperation there is between the two men is a matter for speculation.

The plank against the Jews, absurd though it looks, plays a large part in the National Socialist movement. Thus far, the Jews have been a convenient scapegoat for almost anything. Since class war is to be abolished, Hitler wishes to substitute for it the war against the Jews. Somebody has to be responsible for the catastrophes since 1918; hence, it is Marxism and the Jewish speculators. If all Germans were to unite to fight the Jews, they would eliminate the root of all evil, and at the same time achieve the supreme objective, namely, union. During the past winter, however, the National Socialist writings were directed rather against the Eastern Galician Jews who have entered Germany since 1914 than against the Jews generally. In this fact, one may detect a tendency toward a revision of the sweeping indictment of all Jews as such.

In their opposition to parliamentary government, the National Socialists express what a large number of Germans are thinking. German

[7] Interview with Dr. Erik Krünes, *Berliner Illustrierte,* Nachtausgabe, Oct. 31, 1930.

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political life, with its multiplicity of parties and coalition governments, has been irritating to people who still think in terms of the imperial government; also to young people who are impatient for quick and direct methods. No doubt, the general trend of Continental politics since the war is influencing the National Socialists.

The socialist part of the program is very curious, considering that the National Socialists combat Marxism as their worst enemy. One must remember, however, that for them, Marxism stands only for internationalism and class war. The socialist part of the program has been changed by interpretation far more than the nationalist part. Its cardinal principles are: "abolition of slavery to money interests" *(Brechung der Zinsknechtschaft),* and "the interests of the community above the interests of the individual."

If the demands coming under the first of these principles were interpreted objectively, something very much resembling Marxian communism would result. Here are some of them: abolition of all income not earned by work; workers to share the profits of the large industries; abolition of land rent, and enactment of a law under which land might be confiscated without compensation for purposes of common interests; socialization of all incorporated business organizations.

To exemplify the interpretation which these planks have undergone, one may take the one demanding confiscation of land without compensation. It, of course, stirred opposition among both large and small landholders. In order to make it more acceptable, Hitler issued a statement in April, 1928, to the effect that only such land as was not administered in the interest of the whole nation was to be made subject to confiscation without compensation. The opposition continued, because the interpretation still would allow a National Socialist government to expropriate whatever land it chose. Therefore, in March, 1930, the plank was reinterpreted to the effect that land that was not well administered should be taken over by the government, but with payment; and that only land acquired illegally, according to Germanic law, should be expropriated. It was explained at the same time that this provision was directed especially against Jewish land speculators.

Again, the Marxist plank of profit-sharing is explained by the author of the program, Gottfried Feder, as "a general lowering of prices unaccompanied by lower wages." In an article in the principal National Socialist newspaper, the *Völkische Beobachter* (edited by Hitler), Feder further explains that he does not intend that workers

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shall share in the management of factories; and as to the sharing of profits, he proposes the following scheme: an undetermined part of the profits to go to the upkeep of the factory, improvement of sanitation, scientific research, and training of technicians; a second part to be used in building homes for the laborers and managers, and to provide recreational and cultural facilities; and a third part to be used to lower prices.

While these two interpretations have not as yet been accepted as part of the National Socialist dogma, they have weight, since they come from the official programmatician of the party. They show at least two things: that the planks of the National Socialist program are highly elastic, and are being adjusted whenever there is need; and that the National *Socialist* German *Labor* party is moving in the direction of state socialism.

A proof, and at the same time a result, of the growing conservatism of the party is the split within it which came to a head in June, 1930. Since the very beginning, the Berlin, or North German, section of the party had been more socialistic and more radical than the southern wing, owing to the preponderance of industrial workers, especially in Berlin. Some publications of the Berlin group, headed by Otto Strasser, contained statements approving workers' sharing in the management of factories, and also the sharing of profits in the Marxian sense, which, as has been shown, is not orthodox National Socialism. The Berlin group also showed its leanings toward communism, by (among other ways) its desire for coöperation with Russia; whereas Hitler sees in communistic Russia the worst enemy of Germany. Above all, the Berlin group felt that National Socialism should be revolutionary, that it should remain in opposition, like the Communists, and work toward a violent overthrow of the government and the entire social structure. Since the abortive *putsch* of 1923, Hitler, on the contrary, has been bent upon gaining power only by legal means.

This divergence of opinion continued until, in June of last year, Hitler suddenly issued orders to the effect that the party should be cleansed of all Marxist elements. His letter containing this order is typical of the style used by most National Socialist writers and speakers. He begins by observing that for months he had watched the infiltration of Marxist elements which were undermining the National Socialist movement. "I now find it necessary to expel ruthlessly and

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without exception these destructive elements from the party. We brought this movement into being, and gave it its contents. Whoever does not care for the contents given by us, and especially by myself, either must not join the movement or must leave it. As long as I am its leader, the National Socialist party will never become a debating club for litterateurs or chaotic parlor bolsheviks, but will remain what it is today: an organization with strict discipline, which was not created for the doctrinaire fooleries of political migratory birds, but which has the purpose to fight for a future Germany in which class differences will no longer exist and a new nation will be the master of its own destiny.''[8] The non-conformists were expelled, but still exist as a small distinct group, and still maintain that they are true National Socialists.

The significance of this split is that it shows that there are tendencies in the National Socialist movement which drive it toward communism. And this tendency will not cease; for continually the party receives new adherents from the malcontents among the Socialists and Communists who see in the National Socialist movement primarily a means of obtaining social justice, and they naturally carry the Marxian ideology with them. The question is whether Hitler will be strong enough to keep the party what he wants it to be, namely, a movement directed primarily toward the creation of a strong Germany, not weakened by particularism and class hatred, and able to present a united front against the peace treaties and reparations.

Thus far, Hitler has been successful in steering a middle course between the right wing of his party, consisting of ex-officers and militaristic persons who are working for a *putsch*, and the left wing, which condemns the legal way of getting power and works for a social revolution. He bases his hopes upon the large middle group, which has been augmented since the elections of September 14. For most of the votes received by the party's candidates were drawn from the conservative middle parties and from that element of the population which is generally politically inactive and does not vote. Of the six million four hundred thousand votes amassed, a million were those of small farmers and farm laborers; the remainder came largely from the lower middle classes, former officers and soldiers, students and other young people, and state officials. A not inconsiderable number of votes came

[8] *Völkischer Beobachter*, July 4, 1930.

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from persons who were interested merely in supporting a movement that combined the two tendencies of a national and a social reorganization.

It may be asked what the National Socialists expect to do, now that they have 107 deputies in the Reichstag. For one thing, they have redoubled their proselytizing activities, and with increasing success. They, furthermore, are concentrating their efforts at present upon ousting the Socialists from the government of Prussia and establishing themselves there as they have in Thuringia and Brunswick, and to some extent in Mecklenburg. In this fashion, they hope to gain control over all of the German states, one by one. As to the Reich, they demanded the ministries of war and the interior, which would have given them a chance to control the army and the administration by filling them with their adherents. Their demands at this point were not met; but Hitler has declared that after two more Reichstag elections—at the most, by 1932—the National Socialists will be able to obtain in a legal way, and simply by virtue of their majority, whatever they demand.

The National Socialists have called into being a large popular movement which is still gaining in volume. If Hitler should go too far in toning down the planks of the party program, there are two equally grave dangers: (1) that the movement may pass out of his control, and (2) that it collapse and give way to dangerous despondency, which, in all probability, would swell the ranks of the Communists. On the other hand, the more the National Socialists achieve power, the more it seems necessary that they abandon their present demagogic propaganda and develop statesmanship. Whether Hitler and the other leaders possess the capacity for such a transformation, and whether they can carry it through without losing the confidence of a large part of their adherents, remains to be seen. In any case, considering the adaptability which the National Socialists have shown in many respects since October, 1929, when they first started to expand considerably, and in view of the enthusiasm which, in spite of these changes away from radicalism, still pervades the movement, and, finally, on account of the increasing economic and psychological depression in Germany, it is probable that the party will remain a considerable factor in German political life for a good while to come.

Berlin, Germany. KATE PINSDORF.

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The Personnel of French Cabinets, 1871-1930.[1] From the election of the National Assembly in February, 1871, to the fall of the Briand cabinet in October, 1929, France had eighty-two cabinets and 349 cabinet ministers, under-secretaries excluded. Although French ministers

TABLE I

EDUCATION

Institution	*Living*	*Dead*	*Total*
Faculté de Droit	60	104	164
École Polytechnique	4	29	33
École Navale		18	18
Saint-Cyr	5	14	19
Faculté de Médecine	2	11	13
École Normale Supérieure	9	8	17
Collège	2	3	5
École de Pharmacie		3	3
Lycée	1	3	4
Lettres et Droit	2	2	4
Faculté des Lettres	3	1	4
University	1	1	2
Faculté des Sciences	1	1	2
Cambridge		1	1
École des Beaux-Arts		1	1
École des Mines		1	1
École d'Administration		1	1
Droit, Médecine, Sciences		1	1
École d'Agriculture	2		2
École des Postes et Télégraphes	1		1
Droit, Sciences	1		1
No information	16	36	52
Total	110	239	349

ordinarily neither wield the power of English ministers nor leave behind them a deep impression upon governmental policy, they nevertheless constitute, *ensemble,* the governing class of the nation. Every

[1] There is no French dictionary of national biography. The quest for biographical facts—pursued during a year of study abroad as a Social Science Research Council fellow—has run through various sources, such as biographies, biographical dictionaries of parliamentarians, encyclopaedias, the newspapers of Paris and the departments, and the archives of the Senate, the Chamber of Deputies, and the various ministries. Questionnaires were sent to practically all living ministers, and answers were returned by approximately half of them.

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TABLE II

Occupation

Profession or Business	*Living*	*Dead*	*Total*
Lawyer	32	62	94
Army officer	1	26	27
Professor	12	12	24
Lawyer-journalist	7	15	22
Naval officer	1	15	16
Engineer	3	13	16
Journalist	3	13	16
Publicist	10	5	15
Lawyer-publicist	4	5	9
Physician	1	7	8
Professor-journalist	3	3	6
Publicist-professor	3	2	5
Engaged in commerce	1	2	3
Lawyer-professor	1	2	3
Manufacturer		2	2
Business man	1	1	2
Physician-publicist		2	2
Administrator		2	2
Engineer-professor		2	2
Lawyer-physician		2	2
Industrialist	1	1	2
Agriculturalist	2		2
Law and letters	2		2
Navy and army officer		1	1
Agent (at the Bourse)		1	1
Manufacturer-publicist		1	1
Wine dealer		1	1
Mathematician		1	1
Agriculturalist-industrialist		1	1
Landowner-journalist		1	1
Lawyer-landowner		1	1
Mathematician		1	1
Army officer-professor	1	1	2
Chemist		1	1
Pharmacist-publicist		1	1
Economist		1	1
Archaeologist		1	1
Merchant	1		1
Lawyer-professor	1		1
Printer	1		1
Journalist-editor	1		1
Banker	1		1
Historian	1		1
No information	15	31	46
Total	110	239	349

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deputy and senator looks forward to the day when he can inscribe the words *ancien ministre* after his name. Of the 349 who have held a *portefeuille,* 110 are still living.[2] They constitute a large field for selection whenever a new cabinet is formed, and it is seldom necessary—or even advisable—for an incoming premier to go far outside their ranks in making up a new list for the approval of the president of the Republic.

What type of Frenchman has risen to the ministry under the Third Republic? Whence does he come? What has been his education, his occupation, his previous political experience? If there has been a "type," has it changed as the Third Republic has come to be more and more firmly established? Do the heads of certain ministries depart from the general type? Are there personalities that demand special attention and study? These are some of the questions that arise concerning the political personnel, not only of French, but of other modern national governments.

The place of birth of a Frenchman apparently neither increases nor decreases his chance of becoming a minister. Of the 349, all but twenty were born in France. Fifty-two are credited to the department of the Seine; twelve departments were the birthplace of seven or more; and only seven departments have been ministerially sterile. Upon eight of the ministers, no information is available as to birthplace; and of the remaining twelve, six were born in the French colonies of Algeria, Réunion, and Corsica, two in Geneva, and one each in the United States, Cuba, Holland, and Egypt. All that can be said is that every quarter of France has been represented in the successive cabinets, on a basis roughly proportionate to population.

The tables on education and occupation, however, are very revealing. Of the 294 upon whom educational information is available, 261 were educated with the Facultés de Droit, at the École Navale, Saint-Cyr, Facultés de Médecine, or the École Normale Supérieure—educated, that is to say, to become lawyers, naval officers, army officers, engineers, physicians, or professors. Of the 303 upon whom information regarding occupation is available, 258 were by occupation lawyers, army officers, professors, lawyer-journalists, naval officers, engineers, journalists, publicists, lawyer-publicists, physicians, professor-journalists, or publicist-professors. The most important conclusion that emerges from these figures is that the French governing personnel comes from among

[2] On August 1, 1930.

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those of the people who by education and occupation belong to the professional classes. And if the fact that education beyond the elementary schools is not free, plus the consideration of the ability to withdraw from gainful occupation and acquire a university education, are at all indicative, it might also be said that the governing class comes from the middle or more wealthy party of the bourgeoisie. There are a few examples, like Paul Bert, of poor boys "working their way;" but their number is very small. The overwhelming majority of French cabinet ministers have been university-trained men. With only very few exceptions, they have been educated in French schools and universities.

TABLE III

POLITICAL EXPERIENCE PREVIOUS TO BECOMING MINISTER

Political Activity	*Living*	*Dead*	*Total*
Administrative	28	31	59
Administrative and local politics	26	28	54
Local politics	29	84	113
Neither	27	96	123[a]
Total	110	239	349

Passing to the political experience of ministers prior to their entrance into cabinets, we find that at least 226 of the 349 had previously held either local political offices, administrative positions, or both. Forty-five additional ones have been non-parliamentarians while minister, making a total of 271. Thus, over three-fourths of French cabinet members have been grounded in either or both local politics and administration, or have possessed what was regarded as special fitness upon their entrance into the cabinet. The great majority of the non-parliamentarians were generals of division or vice-admirals, chosen to be ministers of war or ministers of marine.

The figures on the status of individuals at the time of their appointment to cabinet posts reveal nothing unusual or unexpected. The great majority have been members of the Chamber of Deputies. A total of 48 have held office while non-parliamentarians; but three of these held additional terms in the ministry while deputy or senator. Of the 45 who were non-parliamentarians during their entire tenure as minister, 35 were generals of division or vice-admirals. They held the portfolios of war or marine.

[a] Of the 123 who had experience in neither administration nor local politics, 45—5 among the living, and 40 among the dead—were non-parliamentarians.

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TABLE IV

STATUS AT TIME OF APPOINTMENT TO CABINET

Status	*Living*	*Dead*	*Total*
Deputy	72	118	190
Senator	20	50	70
Deputy and senator	12	27	39
Non-Parl. (expert)	2	8	10
Non-Parl. (army)	2	24	26
Non-Parl. (navy)	1	8	9
Senator and Non-Parl.		2	2
Deputy and Non-Parl.		1	1
No information	1	1	2
Total	110	239	349

Several conclusions, seemingly, can be drawn regarding the type of Frenchman that rises to positions in the governing class under the Third Republic. France is governed by the professional classes, and, more specifically, by professional politicians within that class. Special fitness has played some, though a small, part in selections. It has operated mainly in the cases of ministers of war and marine. Finally, the overturn of ministries, whose average tenure under the Third Republic has been eight and one-half months, is of no significance so far as the type of men in office is concerned. It has long been recognized that succeeding cabinets in France usually contain a number of members of preceding cabinets. But even the new members are essentially of the same type of men, so far as education, occupation, and previous political experience are concerned.

Several changes, however, have occurred in the type of men who have become ministers since 1871. During the presidency of MacMahon, sixteen nobles, or pretended nobles, held cabinet posts. Under his successor, Grévy, only three such were appointed. This development is only an evidence of the tendency of the French voters to supplant monarchists by republicans in the elections that occurred after the constitution of 1875 went into effect.

A gradual, but marked, change may be observed in the type of men who have risen to the ministry during the past fifty years, by comparing the statistics on dead and living ministers in the tables above. As far as education and occupation are concerned, the percentage of lawyers and professors is increasing. Army and navy officers are being eliminated, and there has been a great decline in the percentage of

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engineers and physicians. Non-parliamentarians show a greatly reduced percentage, being 40 among the 239 dead and only five among the 110 living. Since, and perhaps by reason of, the tenure of De Freycinet, an engineer, as minister of war, army and navy career men have been largely supplanted by engineers, lawyers, journalists, and professors as heads of the ministries of war and marine. Only one-fifth of the living ministers have been without previous experience in either local politics or administration. Previous experience in administration has apparently become more important. Approximately one-half of the living ministers have that background, while only one-fourth of the 239 deceased were so fortified. Table IV also reveals that in addition to a greatly reduced number of non-parliamentarians among the living, the percentages of those who were deputies at the time of their appointment to cabinet posts has shown a marked increase.

These facts suggest that the professional elements from which France draws its governing class are narrowing to lawyers, professors, journalists, and publicists. Engineers, physicians, and army and navy officers are being displaced. The political class within the professional class is also narrowing in the direction of those who are grounded in previous experience in local politics or administration, and chiefly in administration. Ministers also tend, more and more, to be selected from the Chamber of Deputies.

TABLE V

THE PREMIERS

Total terms	82
Total number of individuals	40
Individual tenure	
One term	24
More than on term	16
Education	
Faculté de Droit	24
École Normale Supérieure	4
Saint-Cyr	2
École Polytechnique	2
Faculté de Médecine	2
Cambridge	1
Collège	1
University	1
École d'Administration	1
Faculté des Lettres	1
No information	1
Occupation	
Lawyer	12
Lawyer-journalist	6
Professor	5
Journalist	4
Army officer	2
Law and letters	2
Archaeologist	1
Engineer	1
Lawyer-publicist	1
Banker	1
No information	5
Previous Political Experience	
Administrative	7
Adm. and local politics	3
Local politics	15
Neither	15

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Special conclusions seem warranted in the cases of some ministers, although nothing of great significance is revealed in the statistics on the premiers. During thirty of the eighty-two terms, the premier has held the portfolio of foreign affairs; during twenty, that of minister of interior; ten, that of justice; five, that of finance; and he has been without portfolio during four terms.

Among the ministries, those of justice and interior appear to be of greatest political significance: first, because the number of individuals who have held these positions is in each case larger than the number of those who have held any of the four other important portfolios; second, because the individuals who have held only one term is greater than among any of the other four. The positions of minister of justice and minister of war have demanded most in the way of technical training. Of 45 ministers of justice upon whom information is available, all have been educated in law. Of 40 ministers of war about whom we have information, 29 have been educated at Saint-Cyr or the École Polytechnique. Only 18 of the 48 ministers of marine received their training at the École Navale. Law-trained individuals have predominated in the ministries of foreign affairs, interior, and finance.

TABLE VI

NUMBER OF CABINET TERMS SERVED BY INDIVIDUALS

Terms	*Living*	*Dead*	*Total*
20	1		1
15	2	1	3
14		1	1
13		1	1
12		2	2
11	1	1	2
10	4		4
9	1	2	3
8	3	5	8
7	5	6	11
6	5	6	11
5	7	7	14
4	12	11	23
3	15	39	54
2	24	55	79
1	30	102	132
Total	110	239	349

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The foregoing has dealt with the type of men that the French political machine has raised to the governing class. An intensive study of the careers of the important individuals would provide a basis for generalizations as to why and how this is done. But a combination of several factors must determine those selected for such special attention. The figures in Table VI indicate that a line might conveniently be drawn to include those who have served five terms or more. Selection upon this basis, however, would eliminate such men as Clemenceau, Combes, Méline, and Waldeck-Rousseau, each of whom had a term of over two years as *président du conseil.* Clemenceau had two such terms, Certainly no man who can pilot a French cabinet for two years can be overlooked. Nor can certain factors be disregarded in explanation of how a deputy or senator, with perhaps a similar background to his colleagues, manages to continue his political journey beyond them to the Quai d'Orsay. Some of these are: (1) his membership and good work on one or more of the parliamentary commissions; (2) his rise to a place of great esteem within his parliamentary group; (3) his friendship and influence with the president of the republic; (4) his possession (or his wife's possession) of a personal fortune, and his ability to provide dinners, conversation, and entertainment, and (5) the extent of his friendship with journalists.[4]

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Ceylon's Government, Old and New.[1] The government of Ceylon presents several points of interest to the student of political institutions. The island is the most important of the British crown colonies, and has been governed in recent years under a dual system, with an appointed executive and a legislative council, a majority of which is elected. A new constitution, which will go into effect during the present year, provides for a novel system with a very large measure of responsible government, on the basis of universal suffrage, for a population overwhelmingly Asiatic, but of several stocks, and with a small European element. This experiment should throw light on the larger problem of the government of India.

Some data—geographical, historical, economic, and social—seem essential to an understanding of the political situation. Ceylon is an island of 25,000 square miles (about half the size of the state of Illi-

[4] See Jules Veran, *Comment on devient Deputé, Senateur, Ministre* (Paris, 1924).

[1] The author visited Ceylon during the past winter. *Man. Ed.*

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nois), lying south of India and just north of the equator. The largest element in the population is the Sinhalese, descendants of an Aryan race that came from North India about the sixth century B.C., became Buddhists in the third century B.C., and retain that religion. Later came other peoples (Tamils) from South India, Hindu in religion, who occupied the northern part of the island. In the sixteenth century, the Portugese gained control of the coasts; and in the seventeenth, the Dutch conquered the Portugese districts. In 1796, during the Napoleonic wars, the Dutch sections were conquered by the British; and after a brief period under Madras they became a separate colony in 1802. After a war with the Sinhalese in the interior hill country, the whole island came under British control.

In the southern and western sections of the island, with abundant rain through much of the year, tropical vegetation is luxuriant. In the northern and eastern sections, the rainy season and vegetation are more limited. Only about one-fourth of the total area is now under cultivation. Formerly, rice, spices, and cocoanuts were the principal economic products. Later, coffee became important; though this has declined. In recent times, tea and rubber have become leading crops; and on the tea plantations the laborers are new immigrants from South India. Of the total population of five millions, two-thirds are Sinhalese. There are over a million Tamils (about half descendants of the older immigrants in the north, and half the newer immigrants on the tea plantations.) There are also about 300,000 Moslems, mostly Arabs, but some Malays; about 30,000 burghers, a mixed stock, descendants of the Dutch and natives; and 10,000 Europeans.

For many years the central government was composed of appointed officials; but since 1910 an elective element has been introduced and gradually extended. The present system was established by letters patent of 1920 and orders in council of 1923 and 1924. The governor is appointed by the British government for a term of six years, and has substantial powers of appointment and veto. There is an executive council of nine members, four official (three ex-officio) and five unofficial. The legislative council, as reconstituted in 1923, has consisted of 49 members, of whom 12 are officials (five ex-officio), three are nominated, and 34 elected. Of the elected members, 23 are from territorial districts, and 11 represent special interests and communities—Moslems, three; Indians, two; Europeans, two; Burghers, two; and the western province, one. The elective franchise is based on ability to read and write English, Sinhalese, or Tamil, and property or an in-

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come of 600 rupees; it includes about four per cent of the population.

The council meets on three days each week. The seats are in semi-circular rows, each with a desk, and with the official members in the front row. At a session in November, 1930, there was almost a full attendance. Proceedings began with the presentation of reports and papers, followed by notices of questions and motions. A bill to establish a university passed second reading, after a motion to postpone action was defeated, although there was no prospect of funds being available, and there were differences of opinion about the location. A bill relating to the law of inheritance for the Mohammedans was postponed when differences of opinion were expressed by the Moslem members. After adjournment for tea, bills making minor changes in civil procedure were approved. The discussion showed a good degree of intelligence, though at times (as in other legislative assemblies) verbose. No sharp division appeared between the official and non-official members.

Numerous government services and agencies have developed, including no less than forty departments, all under the general supervision of the Colonial Secretary, and not organized in major groups of related services. Rural local government is largely in the hands of native village headsmen and village committees. There are some rural and urban districts with local boards; also the three municipalities of Colombo, Galle, and Kandy. There are also local courts, three district judges, and a central court of five judges. The higher officials and a considerable number of subordinate officials in the central government are British, as are the official, and most of the nominated, members of the Legislative Council. The elected members of the latter body are mostly of native stocks.

The recent changes in the government of the colony were made in response to growing sentiment in favor of self-government, but did not cover all the demands of the Ceylon National Congress, a body representing mainly the country Sinhalese. Continued friction in the operation of the new system, as well as recognition of its experimental and transitional character, led to the appointment, in August, 1927, by the Secretary of State for the Colonies, of a special commission of four members, representing the three political parties in Great Britain, to visit Ceylon and report on the working of the existing constitution and what amendments, if any, should be made. This commission was in Ceylon for more than two months (from November 13, 1927, to January 18, 1928), during which time it held 34 sittings in various

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places, visited other parts of the island, and examined 131 witnesses and delegations. Its report, issued under date of June 26, 1928,[2] forms the basis of the new constitution which goes into effect this year; and it is significant that it is the work of a body appointed by a Conservative government in Great Britain, with a peer (the Earl of Donoughmore) as chairman.

At the beginning of its discussion of the working of the present constitution, the commission states: "The most striking character of the Ceylon constitution is the divorce of power from responsibility. The unofficial members, who are not responsible for the conduct of public business, enjoy an overwhelming majority in the Legislative Council; the official members, who are so responsible, are in a permanent minority. The official members owe no allegiance to the Council, and are irremovable except by the governor, in whom all executive authority is vested. The unofficial members, though in complete control in the Council, are denied the prospect of assuming office themselves. Thus, on a counting of heads, those who have the controlling votes in the Council are not called upon to bear the responsibility for their decisions; those who have to bear the responsibility are without the controlling votes." Under these conditions, the commission considered it no matter for surprise that the unofficial members of the Council have launched continuous and irresponsible attacks on members of the government, and hamper the government in executive and administrative matters, especially through the finance committee, which has become more important than the executive council.

After discussing a number of proposals to meet the situation, the commission recommended the scheme which, in substance, has been adopted. Under this plan, the Legislative Council will be replaced by a State Council, to consist of 50 members elected by territorial districts, three ex-officio members, and not more than eight members nominated by the governor. The franchise for the elected members will include all Ceylonese over twenty-one, male and female; and the list of voters which has been prepared includes more than a million, or about twenty-three per cent of the population. As about forty-five per cent of the population is illiterate, special provisions have been made for voting. The former special classes of elected members have disappeared; but the provision for nominated members will enable the governor to select representatives from the smaller minority groups. The more im-

[2] Ceylon. Report of the Special Commission on the Constitution. Printed for the Government of Ceylon by H.M.S.O.

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portant racial groups are so distributed geographically that they will secure representation from the territorial districts.

Perhaps more significant is the change in the powers and functions of the State Council and its members. The Council will deal not only with matters of legislation but also with administration; and for this purpose definite provisions are made for its internal organization. The members of the Council will be distributed, by secret ballot, among seven standing committees, each dealing with a main group of administrative services; and each committee will nominate a chairman, for appointment by the governor, who will have the status of a minister in charge of the services assigned to his committee. In addition, there will be three major departments, under the chief secretary, treasurer, and attorney-general, who will be appointed by the governor and not subject to any council committee. These officers of state will act in an advisory and auxiliary capacity to the ministers and the State Council, of which they will be the ex-officio members.

The ministers will form a board, with the three officers of state as advisers, which will act as a general committee to propose legislation and the annual budget. It is not expected that they will act as a party cabinet, as no distinct parties have developed. It is anticipated that individual ministers may be outvoted at times by their committees, and that committee proposals may be defeated in the State Council, on minor matters, without involving a resignation. But defeat of the board of ministers by the State Council on an important issue, after an opportunity for reconsideration, would involve a new election to the Council, which would either sustain the ministers or lead to a reorganization of committees, with at least some new ministers.

While involving a large measure of responsible government, certain checks and safeguards are provided. The chief secretary will have under his charge the machinery for the drafting of proposed legislation and for the selection of candidates for appointment, through a public services commission. The attorney-general will have supervision over elections. The treasurer will advise in financial measures. The governor will have various negative powers of disapproving or asking for a reconsideration of both legislative and administrative measures; and in an emergency he may put in force a measure considered by him of paramount importance. It may be noted that a provision, similar to the last, in the present constitution has never been exercised.

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Some Bibliographical Aids to the Use of British Government Publications.[1] It is a well recognized fact that government publications are frequently the most valuable, and sometimes practically the only, reliable source of information on many phases of political, social, and economic life. Every bibliographical aid to their use, therefore, is to be highly welcomed by the student of government; and, fortunately for him, these aids are being rapidly multiplied. A noteworthy illustration is the *List of Serial Publications of Foreign Governments, 1815-1929*, now being prepared by Miss Winifred Gregory under the general direction of a joint committee of the American Council of Learned Societies, the National Research Council, and the American Library Association. Under each country will be listed, in a classified arrangement, the reports and other serials which record governmental activities since 1815.[2] Section two of the preliminary checking edition of the *List* is devoted to the British Overseas Empire (except Canada).[3]

Angus Fletcher, librarian of the British Library of Information in New York, points out that "the publication of official documents is a relatively recent development in English parliamentary history. It was not until 1837 that official documents were finally made available to the public, in the form of the regularly issued Parliamentary Papers as we know them today. The publication of Non-Parliamentary Papers is of still later origin."[4] The establishment of His Majesty's Stationery Office was a result of Burke's Act for Economical Reform in 1782, prior to which time the service of this office had been granted as a monopoly to persons in favor at court.[5] The student entering on a study of British public documents can well afford to review the very readable and valuable historical account of the records of Parliament given by Sir Courtney Ilbert, wherein he traces the development of the written reports of the journals and debates from their beginnings.[6]

Desirous of inviting more general attention to its publications, the

[1] Attempt is made here, not to give an exhaustive bibliography of this subject, but merely to call attention to the books and articles which will be of greatest assistance to the research student.

[2] For detailed information concerning the initiation of this project, see A.L.A. *Bulletin*, XXI (1927), 10-11; XXII (1928), 29-30.

[3] New York, H. W. Wilson Co., 1929.

[4] "His Majesty's Stationery Office," *Library Journal*, LII (1927), 461.

[5] *Ibid.*

[6] *Parliament* (new and rev. ed., New York, 1920), 177-195, on "Records, the Press, and the Public."

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British government prepared a descriptive pamphlet which was placed on sale at the bookstall in the entrance hall of the Government Pavilion during the exhibition of 1925.[7] This pamphlet described briefly the function and history of His Majesty's Stationery Office, its publications, catalogues, and lists, and indicated how the publications can be obtained. A much more complete *Guide to Parliamentary and Official Papers* was prepared by H. B. Lees-Smith as No. 5 in the series of bibliographies by writers connected with the London School of Economics and Political Science.[8] The purpose of the *Guide* is to make a survey of the official documents issued by the British government, "so that members of Parliament, librarians, and students may find their way among them readily." The documents are classified and explained in the following groups: (1) Parliamentary Publications; (2) Stationery Office Publications; (3) Statutory Rules and Orders; (4) Parliamentary Debates; (5) papers dealing with day-to-day proceedings of Parliament, and issued for the use of members of Parliament; (6) the bound volumes of the latter papers, issued to form a permanent record; and (7) the Journals of Parliament. Indexes to Parliamentary Papers, Parliamentary Debates, and House and Lords Journals are noted.

Lees-Smith's *Guide* ought to be supplemented by Sidney Horrocks' "Government Publications," in *The Library Association Record*,[9] where more detailed information is given concerning the Sessional Papers (House of Lords Papers and Bills, House of Commons Reports and Papers, House of Commons Bills), Command Papers, and Non-Parliamentary Papers.

In the article already cited,[10] Angus Fletcher makes clear the distinction between parliamentary and non-parliamentary papers, as follows: "In the first place, the official documents published by the Stationery Office are at present classified as parliamentary papers and non-parliamentary papers. Prior to 1923, the latter were called Stationery Office publications. Parliamentary papers relate to matters before Parliament, or theoretically at least, to matters on which Parlia-

[7] H. M. Stationery Office. *Brief Guide to Government Publications; His Majesty's Stationery Office, 1786-1925* (London, 1925).

[8] Oxford University Press, 1924.

[9] Vol. VIII, new series (June, 1930), 93-104.

[10] "His Majesty's Stationery Office," *Library Journal*, LII (1927), 461-463. See also Angus Fletcher, "The British Library of Information," *Special Libraries*, XXI (October, 1930), 287-289, for general information on this same subject.

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ment wishes to be informed, or matters on which the government for the time being may wish to inform Parliament. Of these groups, the first two may be either House of Lords papers or House of Commons papers; the last group is called the 'Command Papers,' i.e., papers presented to Parliament 'by command' of the king (the executive). After each session, an index to the papers issued therein is published under the title *Numerical List and Index to Sessional Printed Papers.* Since 1922, these have been included also in the *Consolidated List of Government Publications.* Prior to that date, there was, in addition to the *Numerical List* above mentioned, a *Quarterly List of Parliamentary Publications,* that for the last quarter in each year covering the whole year. Non-parliamentary papers are issued under the authority of the various departments of administration, and are classified under the names of the departments responsible for their contents, in alphabetically numbered *Lists.* Until 1920, they were comprised in a *Catalogue of Works (other than Parliamentary Papers and Acts of Parliament) published by His Majesty's Stationery Office.* In 1921, a *Quarterly List of Official Publications issued by His Majesty's Stationery Office* was published, that for the last quarter of the year being cumulative for the year. In 1922, this *List* was combined with that of 'Parliamentary Papers' (see above) under the title *Consolidated List of Parliamentary and Stationery Office Publications, Issued by His Majesty's Stationery Office from the 1st January to 31st December, 1922,* which in the following year became simply the *Consolidated List of Government Publications issued by his Majesty's Stationery Office from, etc.,* the present form of the title. There are now also a *Daily List* and a monthly selected list known as *His Majesty's Stationery Office Monthly Circular of Recent Selected Publications.*"

The terms "sessional" and "command" papers are explained also in the description of the origin and history of Parliamentary Papers by Austin Smyth, librarian of the House of Commons, in the preface to the *Guide to the Principal Parliamentary Papers Relating to the Dominions, 1812-1911,*[11] and reprinted by D. P. Myers in *Manual of Collections of Treaties and of Collections Relating to Treaties.*[12] As their titles indicate, both of these books contain other information for

[11] Edinburgh, 1913. Prepared by Margaret Adam, John Ewing, and James Munro.

[12] Pp. 192-194. A short history of the publication and sale of parliamentary papers is contained in the preface to Hilda Vernon Jones (compiler), *Catalogue of Parliamentary Papers, 1801-1900* (London, P. S. King and Son, 1904).

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the research student—the former, for those working in problems involving the British Dominions; the latter, for those investigating foreign affairs.

James B. Childs, chief of the division of documents in the Library of Congress, in *An Account of Government Document Bibliography in the United States and Elsewhere,*[13] has contributed a brief statement on British publications,[14] and has listed the principal catalogues and indexes to those documents,[15] a most valuable bibliographical aid. Somewhat similar lists may also be found in Minto's *Reference Books*[16] and Mudge's *Guide to Reference Books.*[17] Judith Blow Williams, in *A Guide to the Printed Materials for English Social and Economic History, 1750-1850,*[18] devotes a section to "Publications of the National Government."[19] Preceding the bibliographical lists and indexes on each division of the subject, there are valuable descriptive notes on the Parliamentary Debates, Sessional Papers, and Statutes. Perhaps one ought to mention also the brief bibliographical list of parliamentary records and reports of committees in Charles Gross' *Bibliography of British Municipal History.*[20]

All students of British history and government must bow in tribute to the indefatigable zeal of the Hansards. Witness their plans for indexes to contemporary debates and documents. Fronting the title page in the thirty-fifth volume of the *Parliamentary History* (1801-1803), published in 1820, is an advertising notice to the effect that this volume brings the *Parliamentary History* to 1803, from which period it will be continued as *Hansard's Parliamentary Debates.* Furthermore, the editor announces that he is preparing for the press two volumes of indexes, the first to cover the parliamentary history of England from the earliest period to 1803, the second the *Parliamentary Debates* from 1803 to the accession of George IV in 1820. The two volumes, it is stated, "will form a complete Parliamentary Dictionary, or ready Book

[13] Washington, Government Printing Office, revised ed., July, 1930.

[14] Pp. 9-10.

[15] Pp. 40-43.

[16] John Minto, *Reference Books* (London, 1929), pp. 65-66, 75-76; the latter reference gives lists of editions of statutes and indexes of the statutes.

[17] Isadore G. Mudge, *Guide to Reference Books* (5th ed., Chicago, 1929), pp. 279-280.

[18] New York, 1926.

[19] Vol. I, section 5, pp. 37-54.

[20] Cambridge, 1915, pp. 50-52.

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of Reference to every subject of importance that has at any time come before Parliament. The great utility of such a work, not only to members of the two Houses, but to every Lawyer and Politician must be self-evident.'' Persons desirous of subscribing to the books are urged to do so, ''as only a very limited number of copies, beyond the usual impression, will be printed.''

Eventually, in 1834, there appeared the *General Index to the First and Second Series of Hansard's Parliamentary Debates, forming a Digest of the Recorded Proceedings of Parliament from 1803 to 1830,* which was edited by Sir John Phillipart.[21] It will be noted at once that the index was carried to 1830, ten years beyond the date advertised. The index is arranged in five divisions and covers not only parliamentary debates but also state papers; indeed, so complete is the alphabetical index to the subject-matter of the debates that T. C. Hansard boasts that ''there is no subject debated upon, but an abstract of its details may be instantly found.''

But what of the proposed first volume of the index? The preface to the Phillipart volume tells the tale: ''It is necessary to observe that this volume, although *second* in historical order, has been made *first* in course of publication, as being more immediately requisite; the General Index to the History, comprising from the earliest period of Parliament (6 Will. I, 1072, to 43 Geo. III, 1803) must await the favorable reception of the present Index, and such suggestions of improvement as the general inspection and use of it may point out.'' Following the preface is the brief statement: ''Should any general wish be expressed for a similar Index and Digest to the Parliamentary History, such a work would be readily undertaken.'' Presumably no such ''general wish'' was expressed, as the index never made its appearance. Or might its non-appearance have been due to the death in 1833 of the energetic T. C. Hansard?

University of Michigan. EVERETT S. BROWN.

[21] London, Baldwin and Cradock, 1834. The introductory statement, giving a complete table of contents, is signed ''T. C. Hansard.''

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Some Problems of Article XXIV of the Covenant.[1] The majority of the early schemes for a general international organization, or League of Nations, before the Covenant envisaged its functions as principally negative—chiefly the general function of preventing war by peaceful settlement of international disputes. Little or no attention was paid before the Covenant to potentialities of positive and coördinated international action. This is all the more remarkable in view of the growing number of spheres to which international action had already been extended. Apart from Schücking[2] and Mr. L. Woolf,[3] only the proposals of the triumvirate of the "Union des Associations Internationales," M. Fried, M. Paul Otlet, and M. La Fontaine, seriously urged the necessity of rational coördination and positive coöperation.[4] Unfortunately, before the war these proposals failed to receive the serious attention which they merited. The object of the Union was well founded. Already by 1914, there existed over twenty "public unions" and nearly 150 "private associations;" while the growth in the number of international conferences revealed the volume of international activity. Moreover, the dispersion of this activity and the lack of coördination had led to unfortunate overlapping. Three active organizations were occupied with the international regulation of railways,[5] and two with

[1] Article 24 (International Bureaus):

1. There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information, and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

[2] Schücking, *Staatenverbande der Haager Conferenzen.*

[3] L. S. Woolf, *International Government.* Two reports prepared for the Fabian Research Department.

[4] See publications of *l'Union des Associations Internationales,* Brussels, *passim.*

[5] The Central Office for International Railway Freight Transport; the Confer-

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agriculture.[6] The scientific unions worked independently of any comprehensive plan.[7]

But the absence of coördination was not the only weakness apparent in the pre-war situation. The independence of each organization and the lack of a central authority increased the difficulties of working. Elaborate negotiations necessarily preceded the summoning of an international conference, even though the conventional constitution provided for periodic but regular meetings.[8] Further, with the exception of one or two of the most powerful unions, the force of the influence which could be brought to bear on governments was weakened by the isolation of each union. Finally, the absence of a collective political authority often barred the way to progress in international technical organization.

The opportunity for remedying some of these defects came with the drafting of the Covenant, which, in its final form, makes provision in several places for the future of international organization, both in general and in particular.[9] But the most important clause is Article 24, which was devised to make the League the apex of international coöperation.

The origins of Article 24 are obscure. Neither the Phillimore draft

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ence on Technical Uniformity on Railways (both official organizations); and the International Association of the Railway Congress—a non-official union to which over 400 railway administrations adhered.

[6] The International Institute of Agriculture in Rome, a governmental organization, and the International Commission of Agriculture in Paris, a private union of national agricultural associations.

[7] The International Geodetic Association at Potsdam, the Seismological Union at St. Petersburg, and the Permanent Council for the Exploration of the Sea at Copenhagen, all official unions, appear to have worked independently of one another, although their respective functions called for systematic coöperation. The rearrangement of the international organization for scientific work which took place after the Great War appears to corroborate this. A series of allied international conferences held in Paris and London in 1918 and in Brussels in 1919 established the International Research Council to coördinate international activities in the various branches of science, among them the International Union of Geodesy and Geophysics, Section B of which has superseded the former Seismological Union. It should be noted that the central organization and its branches are non-official, in contrast with the pre-war unions mentioned above.

[8] See Schücking, *op. cit.*

[9] Preamble and Articles 23 and 25 of the Covenant.

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of March 20, 1918,[10] nor the House draft of July 16, 1918,[11] made reference to the promotion of international coöperation, but invested the future League only with the negative function of the prevention of war. The Smuts plan of December 16, 1918, was the first draft receiving official consideration which envisaged the League as something more than a dust-bin for disputes. Rightly, General Smuts emphasized the necessity of preventing the germination of disputes by sterilizing the more apparent, and above all the economic, creative forces of disputes through an international organization directed by the future League. "It must become part and parcel of the common international life of states, it must be an ever visible, living, working organ of the policy of civilization . . . its peace activity must be the foundation and guarantee of its war power." This idea was given greater precision in his suggestion that the international administrative bodies already functioning under existing treaty arrangements should be placed under the authority of the League. A number of subjects were mentioned explicitly, including postal and telegraphic communication, copyright, patents and trade-marks, river navigation, and sanitary arrangements. It was urged that the League should make and control the necessary arrangements for their administration in the future, in place of the previous system of separate international conferences. Attention was drawn also to groups of problems previously unregulated, including questions of trade, finance, transit and communications, and labor, which the League should undertake to handle.[12]

Vaguer references to similar functions were incorporated in the final draft of the Cecil plan of January 14, 1919. A section is devoted to the position of "international bodies," one of the three classes of which consists of international administrative bodies, including "bodies already formed under existing treaties." The International Secretariat was to be "the responsible channel of communication between the Inter-State Conference and, so far as possible, all international bodies." Further, the main part of the agenda of the Periodic Congress would be devoted to the discussion of the reports of the Inter-State Conference and of the different international bod-

[10] For text, see *Interim Report of the Phillimore Committee*, printed as Appendix D in Florence Wilson, *The Origins of the League Covenant.*

[11] For text, see D. H. Miller, *The Drafting of the Covenant*, Vol. II, Document 2.

[12] J. C. Smuts, *The League of Nations; a Practical Suggestion.*

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ies.[13] Lord Cecil was not prepared to go so far as General Smuts, for his plan made no provision for the absorption by the League of already existing international bodies; while General Smuts' draft urged the full concentration of international administration under the wing of the League by the automatic affiliation of existing institutions. Neither Wilson's second[14] nor third draft[15] incorporated these suggestions, of which the President must have been aware. But the British draft convention, issued on January 20, 1919, for which Lord Cecil was primarily responsible,[16] so far as concerned international administrative bodies, compromised between the former Smuts and Cecil plans, though incorporating the general tendency of the Smuts proposals.

But in the Cecil-Miller draft of January 27, 1919,[17] the provision for placing existing international administrative bodies under the authority of the League was again omitted, although ample place was given to the non-political activities of the League. So far as the records go, no additions in this respect resulted from Mr. Hurst's revision;[18] while Wilson's fourth draft again omitted all mention of the provision.[19] The French plan[20] concerned itself solely with measures for the prevention of war and the elaboration of procedural rules. Article 8 of the Italian plan[21] reproduced in general outline the skeleton of the British drafts.

Thus the Hurst-Miller draft, upon the basis of which the Preparatory Commission on the League of Nations began work on February 3, 1919, contained no trace of the machinery for making the League the center of international activity which had figured so prominently in preceding British plans. This omission is important, because it suggests that the first impression of the future Covenant upon the Com-

[13] For text, see D. H. Miller, *The Drafting of the Covenant,* Vol. II, Document 6.

[14] For text, see D. H. Miller, *op. cit.,* Document 7. The document is sometimes called Wilson's first Paris draft of January 10, 1919.

[15] *Ibid.,* Document 9. The document is sometimes called Wilson's second Paris draft of January 20, 1919.

[16] *Ibid.,* Document 10.

[17] *Ibid.,* Document 12.

[18] *Ibid.,* Vol. I, Chap. 6.

[19] For text, see D. H. Miller, *op. cit.,* Vol. II, Document 14. The document is sometimes known as Wilson's third Paris draft.

[20] For text, see Appendix H in Florence Wilson, *The Origins of the League Covenant.*

[21] For text, see Appendix I in Florence Wilson, *op. cit.,* especially Arts. 8 and 9.

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mission was that of a preventive rather than a creative instrument.

The period of gestation continued up to the eve of the consummation of the Commission's work. The Drafting Committee, on the initiative of the British delegate, re-inserted the substance of the first paragraph of Article 24, which was thus incorporated as Article 23 in the draft used for the second reading, and adopted as Article 22. The second and third paragraph took shape only during the third reading, again as the result of British amendments.[22] Article 22 became temporarily Article 20, and received the addition of a new paragraph 2: "In all matters of international interest which are regulated by general conventions but which are not placed under the control of special international bureaus or commissions, the Secretary of the League shall act as a central organization for the collection and distribution of information and for securing the effective observance of such conventions if the states thereto consent." M. Hymans' objection that the task of securing the effective observance of conventions would prove too great a burden upon a young and untried organization was accepted, and the relevant section of the clause deleted. Paragraph 3 was also added. This provided that "the expenses of all such bureaus and commissions, including those provided for by this Covenant, may, with the consent of the Executive Council, be treated as part of the expenses of the permanent secretariat of the League." The three paragraphs were adopted as Article 23, and the whole draft then went again before the Drafting Committee, which considered further British amendments; and the text emerged in the form incorporated as Article 24 in the authoritative text of the Covenant of June 28, 1919, with the exception of two small textual differences.[23]

It is clear that the far-sighted view of the League as the pivot of all international organization owed its enunciation during the drafting of the Convention almost entirely to General Smuts and Lord Robert Cecil, ably seconded by the Italian delegation. But it is difficult to reject the suggestion that the work of the Union des Associations Inter-

[22] It is pointed out in Schücking and Wehberg, *Die Satzung des Völkerbundes,* that a great part of Article 24 took shape only between February 14 and April 28, 1919.

[23] In the text of June 28, 1919, in Paragraph 1, and sentence 2, the words "Tous autres bureaux internationaux" replace "Il en sera de même de tous autres bureaux internationaux;" and in Paragraph 2 the word "desirable" replaces "utile." See Schücking and Wehberg, *op. cit.,* p. 757.

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nationales, and of Mr. Leonard Woolf, had to some extent inspired their attitude.[24]

An analysis of the provisions of Article 24 shows the potential breadth of the League's competence in matters of international organization, albeit that competence is subject to certain limitations which appeared essential to the framers of the Covenant. At the same time, the drafting of the article has left the door open to ambiguity in some respects, more especially with regard to the nature of the limitations. The first section of the first paragraph concerns international bureaus *already established* by general treaties. These bureaus are to be placed under the *direction of the League if the parties to such treaties* consent. From the wording, what is meant by "already established" is not at all clear. By Article 282 of the treaty of Versailles, certain international treaties and conventions to which Germany had been a party before the outbreak of war, but which were held to have lapsed on account of the war, were explicitly revived.[25] Those conventions omitted from the list of Article 282 were, *ex hypothesi,* presumed to have been abrogated. But this doctrine neglects the position of neutrals. For between Germany or the Allied Powers, respectively, on the one hand, and the neutrals, on the other hand, the conventions remained undisturbed.[26] In the course of the discussion in the League of Nations Commission, it was agreed that "direction" in the English text was best rendered by the French "autorité." Finally, the renunciation of the idea of a super-state rendered the consent of the parties essential to the operation of the provision.

The second sentence of Paragraph 1 provides that all international bureaus and commissions established after the foundation of the League shall be placed under the direction of the League. The clause aimed at the *automatic* inclusion within the framework of the League of all organs of international coöperation established since the war. This could be effected by the insertion in the convention establishing a new bureau

[24] It should be noted that the drafts for a League of Nations prepared by the German International Law Association (Art. 36) and by the German Government (Art. 19-22) contained proposals similar to Article 24. See Schücking and Wehberg, *op. cit.,* p. 757.

[25] Broadly, the international conventions connected with the organization of communications and commerce were revived, while those relating to international scientific activity were omitted from the list.

[26] See K. Neumeyer, in *Revue de Droit International,* April-June, 1924, for a discussion of this question.

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of a provision stating that the bureau or commission would be placed under the direction of the League. The consent of the parties to the inclusion of such a clause in the convention could be presumed at a time when the United States appeared to be leading the movement for the establishment of the League, and when the Central Powers, to be excluded from the future League, were destined to be excluded directly or indirectly from new post-war international unions and associations.[27] For a reversal of the policy of exclusion, the preliminary condition of acceptance of the continuance of the League's "direction" could easily be exacted. If the convention contained no such provision, "automatic" affiliation would be impossible; for the consent of all the signatories of the convention to the application of Article 24 would be necessary. The discrepancy between the English and French texts has rendered the precise meaning of the sentence uncertain. While in the former the word "such" appears to indicate that only bureaus established under general conventions are meant, in the latter this limitation has disappeared. In practice, the Council has tended latterly to adopt the British version,[28] although on one occasion it was the British representative on the Council who argued against this limitation.[29]

Paragraph 2 is a double invitation, first to the Secretary-General, subject to the prior consent of the Council, and secondly, to the parties to international conventions which regulate matters of international interest but which do not establish bureaus or commissions for their control, to agree that the Secretariat shall (a) collect and distribute all relevant information, and (b) render any other assistance that may be necessary or desirable. The position of the League was complicated by the existence of a number of conventions dealing, among other subjects, with opium,[30] the traffic in obscene publications,[31] the prohibition of night work for women,[32] and the white slave traffic.[33] The successful operation of international regulatory conventions, most

[27] E.g., International Commission for Air Navigation. *Treaty Series* (1922), No. 2.

[28] See below, p. 415.

[29] League of Nations *Official Journal,* August, 1923, p. 858.

[30] *Parliamentary Papers,* Misc., No. 2. (1912).

[31] Marten, *N.R.G.,* 3rd Series, VII, p. 266.

[32] *Treaty Series* (1910), No. 21.

[33] For the convention of 1910, see Martens *N.R.G.,* 3rd Series, VII, p. 252.

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of them prohibitive in character, had early been shown to be dependent on the collection of full information, on the widest publicity being given to the abuses revealed, on the remedies suggested, and, finally, on the pressure mobilizable against recalcitrant governments which failed to follow up their acceptance of the convention by national legislation or administrative regulations. The object of the paragraph was evidently further to extend the scope of the League's activity by filling a gap the existence of which before the war had seriously jeopardized the success of a number of international conventions. The Secretariat, through the collection and distribution of all relevant information, would wield a powerful weapon of coercion; while the further services foreshadowed might include not only the establishment of a special commission or administrative organ, subject again to the consent of the Council, but the preparation of the ground for future international conferences upon these problems.

The third paragraph provides for the inclusion within the budget of the Secretariat of the expenses of any bureau or commission placed under the direction of the League, subject again to the consent of the Council. It is not at all clear whether the intention of the framers of the Covenant was to offer an inducement to the unions already established to place themselves under the League or simply to provide the necessary financial arrangements for the operation of Article 24 as a whole. Further, it is doubtful upon what terms the Council would agree to the inclusion of the expenses of a bureau within the budget of the Secretariat. Would the bureau be required to cede any financial autonomy it might possess? Or would the League allow the bureau to make its own budgetary arrangements? Further difficulties appear when the different systems employed by unions for calculating the number of units to be paid by each state member are considered in relation, first, to the system adopted by the League and, secondly, to the divergent membership of the League and of any one international union.[84]

The article draws the outline of an ambitious scheme for the League's future in international administration. This outline has been filled in by a series of subsequent interpretations. Effort has been mainly concentrated on giving greater precision to the definition of "direc-

[84] Cf. the system of apportioning the expenses of the League among the states-members, modelled upon that of the Universal Postal Union, with the voluntary method adopted by the International Institute of Agriculture.

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tion,'' and to measures necessary for the exercise of the League's ''direction;'' on defining the terms of eligibility; and finally, on elaborating the mechanism for the invocation of Article 24.

As early as 1921, the Council found the necessity of giving greater precision to the indefinite term ''direction;'' and the rules embodied in the Hanotaux report of 1921,[35] with occasional restatement and elaboration, have remained the official interpretation. The definition rests on the intention of the authors of the Covenant, who had no wish to destroy the internal independence of the various international institutions concerned by interference with their constitutional provisions or their administrative arrangements. Their main object was to make the League the coördinating authority for the work of these institutions. The League's aim was not subordination but coöperation. Hence, the League would have to satisfy itself that the work of an institution requesting to be placed under the League was genuinely international, necessary, and not performed by another and parallel agency. The ''direction'' would be confined mainly to moral support, unless certain pretexts arose for a more active interference. These occasions would arise where an international bureau began to encroach upon a sphere other than its own, or when one international institution unjustifiably refused to coöperate with another, or where the activity of an institution was insufficient to promote its declared aims. Apart from these and similar exceptional cases, the League would have no justification in interfering with the internal organization of the institution or in introducing amendments to its established organization. Of course, there would be nothing to prevent the League from making ''suggestions;'' but these would have no obligatory force.

But while interference by this interpretation would be reduced to a minimum, certain measures would be necessary to ensure the exercise of the League's ''direction;'' although the exact degree of direction could be determined only with the consent of all the parties. It has been subsequently urged that the League would have the right to insist upon receiving all publications of the organization. The bureau would also be required to give all possible help to the league, within the limits of its competence. As a guarantee of the utility of its work, the bureau or commission would be asked to furnish an annual report to the Secretary-General. Not only would the League retain the right to make suggestions concerning the work or organization of the bureau,

[35] See *Minutes of the Thirteenth Session of the Council*, p. 54 and Annex 225.

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but the latter would be required to provide a channel for their discussion and consideration. In the event of the application of Paragraph 3, the League's auditors would be authorized to undertake a verification of the accounts of the organization, and might, if the conditions warranted it, exercise supervision over the expenditure of its financial resources. These "minimum measures" would be supplemented by further action where the occasion demanded closer investigation and control. It has been suggested that the League should be consulted when an organization wishes to change its seat or to appoint or dismiss certain classes of officials. Finally, the institution might be asked to include upon its governing body or executive commission a representative of the League, either with full voting powers or in an advisory capacity. But the degree of "direction" clearly would vary with each particular case, and it has been found both difficult and inexpedient to lay down a hard and fast rule, incapable of variation.[36]

The obscurity of the Hanotaux report upon the conditions of eligibility has been dispelled by subsequent rulings, notably by the Council during its 25th session.[37] The Council held that "Article 24 of the Covenant refers solely to international bureaus which have been actually established by general convention." The reason given for this decision was "the risk of diminishing the activity of those voluntary international organizations, the number of which is fortunately increasing, by even the appearance of an official supervision." Only so-called "public" organizations with established bureaus are eligible under Article 24. This ruling strictly disqualifies from the operation of the article all international organizations which are not based upon an international convention, but which are, in practice, recognized not only by governments but by the League itself. By the Hanotaux interpretation, there was nothing to prevent the Council from accepting the application of these hybrid organizations.[38] The eligible bureau,

[36] See *Records of 4th Session of Assembly, Plenary Meeting,* p. 320.

[37] See *Minutes of the Twenty-Fifth Session of the Council,* pp. 858 and 954.

[38] Until the resolution of the Council in its 25th session, there was nothing to exclude optional requests for affiliation under Article 24 from non-official bureaus. Requests were actually received from several such organizations, notably the International Institute of Commerce, the International Commission on Agriculture, and the International Bureau for Information and Enquiries regarding Relief to Foreigners. Moreover, the last-named was placed under the League's direction by a resolution of the Council of June 27, 1921. See *Minutes of the Thirteenth Session of the Council,* Appendix 225.

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then, must now satisfy the League that it is a "public" organization, pursuing a function of international interest, with a personnel and financial position adequate for the performance of that function. In considering the application, the League would take into account the degree of universality of the membership of the organization and the permanent nature of the work undertaken.[39]

But the main omission from Article 24 was the matter of machinery for its invocation and application. This defect has to some extent been remedied by the procedures since elaborated. A distinction must be drawn between three cases: (a) bureaus already established; (b) bureaus constituted after the League's formation, all of whose members are also members of the League; and (c) bureaus constituted after the League's formation, one or more of whose members are not members of the League.

(a) In the case of bureaus already established, a request for the application of Article 24 may be made on the initiative of the union. Alternatively, the Council or the Assembly may draw the attention of a union to the existence of Article 24.

(b) The position as to bureaus constituted after the formation of the League differs, because the framers of the Covenant clearly contemplated the automatic operation of Article 24, while they did not contemplate the abstention of the United States. It is difficult to acquit the Commission on the League of Nations of a charge of over-simplification in this respect. Not only was the membership of the League deliberately restricted in the first place, but they must have realized that, besides the excluded Central Powers, there would be other states at first or for a long period unwilling to join the League. Yet it was well known that many of the latter were prepared to take part in international organizations for a restricted purpose, which the League was designed to further. In view of these facts, an inconsistency may be found in this unqualified provision for automatic inclusion, in contrast to the basis of consent, which is the mainspring of the Covenant. Now it is clear that, where all the signatories of the convention are at the same time members of the League, the application remains automatic. Thus, any such union established after the entry into force of the Covenant is bound to make constitutional provision for the application of Article 24. In the event of their not doing so, the members of

[39] In view of the limited membership of a number of organizations which, nevertheless, pursue objects of a recognized international interest, the criterion of *function* is more generally applicable than that of *membership*.

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the union are committing a breach of Article 20 of the Covenant, in as much as they are also signatories of the Covenant.[40] Alternatively, it would be difficult to argue against the view that members of the League have, as such, an obligation to see that Article 24 is applied to a post-Covenant union. Therefore, every state-member is presumed to have the right to propose, either in the Council or in the Assembly, that Article 24 be applied. The transference of the initiative to the Secretary-General might only prove an embarrassment. As the policeman of Article 24, he might find it difficult to exercise the prerogative of his calling and avert the constabulary eye from international agreements and bodies which clearly do not come within the scope of Article 24, but which may be brought by interested parties to his unwilling notice. Further, no state-member of the Council or the Assembly is justified in objecting in principle to the placing of a union under the direction of the League, provided the preliminary conditions are fulfilled. A state-member of the League would not be justified in vetoing the affiliation of a union under Article 24 on the ground that the state itself had not adhered to the union, when the latter fulfilled all the requirements of eligibility.

(c) Where, however, the members of the bureau are not all states-members of the League, the automatic procedure cannot in practice be applied. In strict law, those members of a union who were previous to its establishment members of the League may be held to have committed a breach of Article 20 by entering into an agreement which does not provide for the application of Article 24. But, as in so many other instances, the position of the United States has destroyed the practical value of this rule. For most purposes of international administration, the coöperation of the United States is essential. This consideration has led to a circumvention of Article 24 by the obvious device of reciprocity in silence. With the International Institute of Refrigeration, established in 1920, to which the government of the United States has appointed the American Association on Ice and Refrigeration as its official representative, this procedure has been adopted. In such cases, the procedure required for the application of Article 24 must, of necessity, be facultative and not automatic. The

[40] Article 20, Paragraph 1, of the Covenant of the League of Nations states that "the members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof."

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request should originate from the governing body of the union; or a resolution of the Council or Assembly, upon the initiative of a state-member, should draw the attention of the union to Article 24.

There can be no doubt that the request of a union for the application of Article 24 must be in the form of an authoritative resolution of the governing body of that union; while the "direction" of the League must be established by a definite legal act, admitting of no future doubt. It is suggested that a resolution of the Council declaring that the institution is henceforth placed under the direction of the League would be the most appropriate method. This acceptance is dependent upon the fulfillment of any conditions which the Council may decide to propose. The value of this discretionary power would be all the greater where doubts have arisen concerning the desirability of the objects pursued, or the size of the membership of the institution, or any other issue. Moreover, the acceptance may be made conditional upon the performance of functions or measures of reorganization laid down by the Council. This power is inherent in the expressed intention of the framers of Article 24 to create in the League the coördinating authority of international activities.

There are no constitutional reasons to prevent the Council or the Assembly from seeking an advisory opinion from the Permanent Court of International Justice in the event of disagreement over the application of Article 24 in the case of a particular bureau. If the Council or the Assembly agreed in advance to accept the opinion of the Court as binding, this procedure would remove the danger of an abuse of its right of veto by a state-member. The Court would become a court of appeal, in so far as disputes connected with the application of Article 24 were concerned. Thus, subsequent interpretation has grafted on to Article 24 a more precise definition of its terms and a certain code of procedure.

The results so far achieved have been disappointing. It has been remarked that "the League has built a large and well-equipped hotel, but the guests are slow in arriving." No more than four organizations have been brought under the "direction" of the League. Of these, three—the Brussels Central International Office for the Control of the Liquor Traffic in Africa,[41] the International Commission for Air

[41] *Treaty Series* (1919), No. 19. The Convention of St. Germain replaced the abrogated Berlin Act of 1878. Placed under the direction of the League of Nations by the resolution of the Council of January 11, 1922.

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Navigation in Paris,[42] and the International Hydrographic Bureau at Monaco[43] are public post-war organizations; while the fourth, the International Bureau for Information and Enquiries regarding Relief to Foreigners[44] (also a post-war creation) is not strictly a public union. It is true that collaboration between the technical and other organizations of the League and various non-League international bodies has taken place to an increasing degree;[45] while the inclusion of the second paragraph of Article 24 has saved the article from insignificance by providing for an indefinite extension of the activities of the Secretariat.[46] The fact remains, however, that of over twenty public unions established before the Covenant, not one has accepted "a room in the hotel." These unions include some of the oldest, the most powerful, and the most essential international organizations. Again, the non-application of Article 24 to the International Institute of Refrigeration at Paris,[47] created since the Covenant, and to the recently established Bank of International Settlement at Basle,[48] suggests that the intention of the authors of the Covenant is far from achievement.

The attention of the four powerful organizations in Berne—the bureaus of the Universal Postal Union, the International Telegraphic and Radiotelegraphic Unions, the Railway Freight Transport Union,

[42] *Treaty Series* (1922), No. 2. Placed under the direction of the League of Nations by the resolution of the 4th session of the Assembly. See *Records of 4th Assembly, Plenary*, p. 275.

[43] Placed under the direction of the League by a resolution of the Council, October 2, 1921. See *Official Journal*, December, 1921, p. 1166.

[44] This must not be confused with the International Relief Union to be created under the Geneva Convention of July 12, 1927, which is not yet in force. See *Official Journal*, VIII (1927), p. 997.

[45] E.g., the International River Commissions maintain close contact with the Communications and Transit Section of the League. The Universal Postal Union and the non-official International Criminal Police Commission both lend invaluable aid to the opium organization.

[46] E.g., in 1924 the Secretariat took over the work of the International Bureau for the Protection of Children, which had requested to be placed under the League's "direction" in 1921.

[47] L.N. *Treaty Series*, VIII, p. 66.

[48] See *Official Journal*, Records of Tenth Session of the Assembly, Minutes of Second Committee, p. 59, for the discussion of the resolution of the Norwegian and other delegations requesting the application of Article 24 to the Bank. The resolution was withdrawn in the face of opposition.

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and the Industrial and Scientific, Literary and Artistic Property Union—was drawn to Article 24 in 1928. The Federal Council of Switzerland circularized among these bureaus a questionnaire as a result of the action of the Secretary-General of the League in sending to the federal government and the bureaus copies of a report by the Chinese representative. This report, accepted by the Council of the League, defined the measures necessary for the application of Article 24.[49] The replies received were unsatisfactory. Among the reasons for rejection, which differed widely, were the instability of the League, the danger of the political atmosphere of Geneva, the wider membership of the unions, and the impossibility of giving the League access to confidential minutes. The enunciation of these more or less superficial excuses absolved the unions from giving voice to two far more weighty objections—first, the well-established conservatism of the bureaus and their reluctance to disturb the existing régime, and secondly, the jealously-guarded prestige of the Swiss government.[50]

What are the reasons underlying this comparative failure? First, it is clear that the framers of Article 24 worked in the belief that the League would be universal, with the temporary exception of the Central Powers. The abstention of the United States weakened in part the whole basis of the attempt to create in the League the center of consciousness of international organization. But the attitude adopted by the United States toward international technical organization, both within and without the framework of the League, suggests that this difficulty is not insuperable. The United States government not only sends representatives to the meetings of many of the League's technical bodies, but is a member of the International Hydrographic Bureau already placed under the "direction" of the League. Secondly, the apathy of public opinion has led to inertia among the agencies for the application of Article 24. No serious and comprehensive attempt has been made, through either the Council or the Assembly, to set the machinery in operation. In a word, Article 24 remains the Cin-

[49] Publications of the League of Nations, XII. B. *International Bureaus*, 1928, XII. B. I.

[50] By the conventions of the Universal Postal Union, the International Telegraphic and Radiotelegraphic Unions, the International Railway Transport Union, and the Union for the Protection of Artistic and Literary Property, and of Industrial and Scientific Property, the Swiss federal government, through its appropriate departments, is appointed to supervise the work of the bureaus established under these conventions.

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derella of the Covenant. This attitude is indefensible, in view of the interests, not only of the League, but of international society as a whole.

The application of Article 24 is the more urgently needed because the peace settlement made possible a long overdue extension of international organization, both official and non-official, which had been held in abeyance only by the Great War. The Covenant itself provided for the formation of organizations dealing with a formidable list of problems. Never has the need of a coördinating and supervisory authority been more insistently felt by the experts actually engaged in the different spheres of activity. Whereas there were, before the war, three organizations concerned with the regulation of the international railway service, now there are five;[51] and the same multiplication exists in other directions.

Moreover, separatism in international organization weakens the structure, not only of the League, but of each independent unit. Dispersion not only complicates the administrative arrangements necessary for international consultation, legislation, and execution, but weakens the influence which the more progressive elements in the international community can bring to bear upon the less enterprising. Each new organization established outside the "direction" of the League is weakening the latter's claim to be the center of the rising international society by distracting attention away from the League, by creating new vested interests in maintaining the separate establishment of the union, and by reducing the total sum of collective influence mobilizable in favor of international coöperation and the prevention of war. The successful formation and administration of an international society will depend upon the interaction and ultimate synthesis of different articulate international interests, in the same way that the condition of a national society is determined by the interplay and harmonization of varying vocational and functional interests.

Herein lies the fundamental importance of Article 24: it is, in principle, the bridge between international separatism and international federalism. Already, for certain purposes, states have agreed—and this

[51] The Communications and Transit Section of the League of Nations, the Central Office for International Railway Freight Transport (both official organizations); the Federal Council of Switzerland, which is responsible for summoning regular conferences on Technical Uniformity on Railways and the European Timetable; and the International Railway Union and the International Railway Congress Associations—both non-official.

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is the essence of the federal idea—to renounce their sovereignty.[52] The tendency is discernible in the spheres, among others, of international communications, science, and social protection. It is essential that this evolution be facilitated by the development of an international federal idea, which must be a slow growth, feeding on practical manifestations of its inevitability. The concentration under the "direction" of the League of all essential international activity would tend, as it has already tended, to stimulate this growth. For federalism springs from two necessities—the avoidance of separate extinction and the performance of positive services, neither of which can be achieved by the individual units of the federal body. The separate national statesmembers of the League may be conceived as walking mid-way between isolation and federation, in face of the above-mentioned necessities. It may be argued that the path of "collaboration" is easier to tread, while it is as efficient in the performance of the required function. But this view avoids the problem. Collaboration is in no way obligatory. The international regulation of public services would, however, be impossible without the certainty of performance which the acceptance of an obligation binding the contracting parties to invest an international administrative body with the power to perform an essential function alone would assure. Article 24, then, can play a vital rôle by fitting each mosaic of international life into its appointed place in the general pattern, and thus strengthening the growth and appeal of the federal conception.

Attention may now be drawn to the lines upon which practical action may proceed to give effect to the provision of Article 24. The Secretary-General should be requested to prepare the ground thoroughly for a comprehensive examination of the possibilities of Article 24 by the Assembly or Council through a committee of experts. The analogy for such an inquiry could be found in the "De Broukere committee" upon Article 11. The terms of reference of this inquiry should include not only an examination of the validity and expediency of the various interpretations given to Article 24 since 1920,[53] but the

[52] See Universal Postal Union, Convention of London, 1929, Article 1.

[53] The rules of eligibility especially demand reconsideration. According to one view, the Council, in limiting the application of Paragraph 1 to bureaus or commissions established under general international conventions, has disregarded the intentions of the authors of the Covenant. The strict exclusion of the large number of international unions not established by a diplomatically-concluded general convention, but whose status may be described as semi-public in view of the interest

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recommendation of measures and machinery necessary for the application of the article. It would seem that the time is opportune for the summoning by the Council of a consultative conference of the directors or other representatives of international official and semi-official bureaus and organizations with a view to the formulation by the technical organizations, first, of their attitude toward Article 24 and the principle of collective international coöperation, and secondly, if the conditions warrant it, of a definite resolution, recommending the application of Article 24 to the governing bodies or congresses of the several non-affiliated organizations. Further, the attention of states-members of the League should be drawn to the opportunities provided by the meetings of the governing bodies of any unions of which they are also members for raising seriously the issue of Article 24. But both lines of approach should be cleared of preliminary obstacles through the action taken by the Secretary-General and the committee of the Council.

Finally, the full achievement of the aims of the authors of the Covenant can hardly be realized without the establishment of a permanent organization representative of the different branches of international official and semi-official activity. The need for such an institution is urgently felt for the performance of three main functions. First, a permanent commission of international coöperation would substitute regular for fortuitous coördination by providing an instrument for collective coöperation. Second, any disputes between international organizations arising from encroachment, non-performance, or status, could be brought before the commission for settlement. Third, a permanent commission in close touch with the political microcosm of Geneva would be in a position to crystallize authoritatively the demands of official and semi-official international organizations for

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and aid lent to their activities by governments or administrations, in no way helps to establish the League as the apex of international coöperation. The distinction between public and private organizations, upon which legal formality still insists, has pragmatically broken down. Rigid insistence on an outworn principle must prejudicially affect the fulfillment of the purpose of Article 24. Similarly, strict rules requiring that the governing body of a bureau should be composed of a large majority of official representatives are to be condemned. It may be presumed that the effective collaboration of a group of governments with a number of authoritative private organizations for an object of international interest approved by the Council would be a sufficient guarantee for the latter body, even though the governing body of the union were composed mainly of the delegates of the private organizations.

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the full recognition in international law of their public status. For, in extending the conception of international departmental government by an international civil service lies the future success of an inevitable sociological development. The establishment of a Permanent Commission of International Coöperation would signalize the first recognition of functional federalism in international government.

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Federal Governments and International Labor Agreements. The International Labor Organization has become one of the most active of all the international institutions of the post-war period. According to the treaty of Versailles, international labor conferences, composed of delegates from countries which are members of the International Labor Organization, are to meet annually to consider and adopt recommendations and conventions applicable to labor problems and conditions throughout the world. The subjects for a number of possible agreements are suggested in the Versailles treaty, and include the right of association of laborers, the establishment of the eight-hour day, the adoption of the weekly rest period, the abolition of child labor, and various related matters. In drafting conventions and recommendations, the conferences are to be guided by a number of principles laid down in the Versailles treaty, and are asked to recognize that "differences of climate, habit and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labor difficult of immediate attainment."[1]

Economic difficulties alone were recognized, at first, by the makers of the treaty of Versailles as standing in the way of the attainment of "strict uniformity in the conditions of labor." It was, however, soon brought to the attention of the Peace Conference that governments might not all prove equally competent constitutionally to deal with labor problems, and that some might prove totally lacking in legal capacity to adhere to the proposed labor conventions. This legal limitation was felt to be especially likely to arise in the case of federal governments, in many of which all matters of labor legislation are reserved to the member-states, and hence are beyond the legislative powers of the central governments. It was predicted by some that these legal difficulties would prove more stubborn obstacles to the uniform

[1] Treaty of Versailles, Art. 427.

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regulation of labor matters than differences in climate, habits and customs, and economic opportunity.[2]

After sharp disputes upon the point, the Peace Conference decided to make special provision for legal as well as economic differences among the various countries. As a result, the following clause was included in the treaty of Versailles, making concessions to those governments whose constitutional power to deal with labor problems might be subject to limitations: "In case of a federal state, the power of which to enter into conventions on labor matters is subject to limitations, it shall be in the discretion of that government to treat a draft convention to which such limitations apply as a recommendation only."[3]

The first international labor conference met in Washington in 1919 and drafted agreements dealing with six different subjects, i.e., hours of labor, unemployment, night work for women and children, care of women before and after child-birth, and the minimum age for the entrance of children into industry. Including that of 1929, eleven conferences have adopted a total of twenty-six conventions and thirty recommendations, which range in subject-matter from the medical inspection of persons employed at sea to the establishment of public employment agencies.[4] Every state represented at a conference is under obligation to submit the conventions and recommendations agreed upon to the "competent authority" of its own government for decision within eighteen months after adoption by the conference.[5]

United States. The United States is not a member of the International Labor Organization. The government of the United States has, at times, supplied information to the director of the Labor Office, but it has not participated, officially or otherwise, in the international conferences.[6] Consequently, none of the labor conventions has been submitted to the United States for ratification, and no proposal to consider them has been officially entertained.

It is evident that most of the subjects with which the international

[2] Hetherington, *International Labor Legislation* (1920), p. 35.

[3] Treaty of Versailles, Art. 405.

[4] See the tables in the *Report of the Director of the International Labor Office* (1930), pp. 99-132.

[5] Treaty of Versailles, Art. 405.

[6] At the invitation of the government of the United States, the first of the international labor conferences was held in Washington in 1919. Although the Secretary of Labor was elected chairman of the conference, he acted in that capacity as a private individual. The United States was not represented officially.

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conventions deal do not fall within the range of the legislative authority of the national government. The regulation of hours of work, unemployment, and child labor[7] are matters under the jurisdiction of the several states. Whether the United States, by the exercise of its treaty-making power, can become a party to the labor conventions, or, for that matter, to any conventions dealing with subjects within the legislative control of the states, is a question of constitutional law which has aroused the sharpest differences of opinion.[8] It would, however, be possible for the United States to accept the agreements and to treat them as recommendations only, in accordance with Article 405 of the Versailles treaty. The political probability of its doing so seems, however, extremely remote.

Argentina. Argentina has not, up to the present time, ratified any of the international labor conventions. The failure of the government to do so is to be explained by economic, rather than by legal, causes. The president has recommended to Congress ten of the agreements for ratification, but that body has taken no definite action upon any of them. Some of the conventions recommended deal with hours of work, unemployment, minimum age of children in industry, and night work of women and children.

The government of Argentina does not consider that its power to adhere to, and to enforce, the labor conventions is affected by its federal type of organization.[9] In spite of the fact that some of the treaty subjects, such as labor in agriculture, are under the jurisdiction of the provinces, the national government deems itself competent to adhere to any agreement which it negotiates. All provincial constitutions and laws inconsistent with a national treaty become void;[10] and even the reserved powers of the provinces are no barrier to the adherence of the national government to the treaties. For example, the law of procedure is left by the national constitution to the regulation of the provinces. Yet, in 1889 the central government agreed to an international convention upon that subject which clearly invaded the

[7] Adkins v. Children's Hospital, 261 U.S. 525.

[8] Chamberlain, in *Procs. Amer. Acad. Pol. Sci.*, VIII, 90-99 (1919); Parkinson, in *Amer. Labor Leg. Rev.*, IX, 21-32 (1919); Borchard, in *Yale Law Jour.*, XXIX, 449; Mikell, in *Penn. Law Rev.*, LVII, 435; Willoughby, *Constitutional Law in the United States* (2nd ed.), I, 518.

[9] Calderón, *Manuel de la Constitución Argentine*, p. 519.

[10] Gonzáles, *Manuel de la Constitución Argentine*, p. 413.

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powers of the provinces. No question of its legal right to do so was ever raised.[11]

The requirements of a number of the international labor conventions have been fulfilled by national legislation, but without formal ratification. For example, on June 3, 1921, the Chamber of Deputies adopted a bill limiting hours of work to eight in the day and forty-eight in the week in industrial and commercial undertakings, and the provisions of this bill reproduced in all essential points the articles of the Washington Draft Convention.''[12] Other conventions which have been similarly treated include sickness insurance, inspection of emigrants, repatriation of seamen, and equality of treatment between foreign and native laborers in respect to accident and workmen's compensation.[13] All of these acts are the results of national legislation, and no question of the legal right of the government to take these steps has been raised by the several provinces.

Brazil. Brazil, like Argentina, is a highly centralized federation in which the checks upon the central government are more likely to be political than legal. The powers of the national government, in fact, are so numerous and so broad that most subjects which are likely to become matters for international negotiation are already within the authority of that government.[14]

The president of the republic has recommended four of the labor agreements for ratification; but, up to the present, no formal action has been taken. These conventions concern the regulation of the hours of labor, unemployment, care of women before and after childbirth, night work for women, and child labor in industry.[15] Although the agreement concerning hours of labor was not ratified, the International Labor Office was informed that the bill concerning the regulation of the hours of work in industry and commerce, drawn up by the Commission on Social Legislation, had been adopted without discussion by the Chamber of Deputies.[16]

The federal character of the government was evident in the action taken upon the conventions dealing with labor in agriculture. The

[11] *Proceedings of the First International Conference of the American States* (1889), p. 923.

[12] *Report of the Director of the International Labor Office* (1921), p. 29.

[13] *Ibid.* (1921), pp. 91-103.

[14] Constitution of Brazil, Art. 34.

[15] *Report of the Director* (1930), pp. 99-133.

[16] *Ibid.* (1924), p. 145.

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subject-matter of the conventions dealing with minimum age for workers, the right of association, and workmen's compensation in agricultural occupations are within the legislative powers of the states; and those agreements were submitted by the national government to the several states, with no suggestion as to their disposition. No information is yet available as to the action of the states.

It is not at all clear, in view of the nature of the treaty-making powers of the Brazilian government, that the action of the central government in submitting the conventions to the states was legally necessary. The reserved powers of the states in the past have proved no barrier to the making of international agreements, which, when made, become superior to all inconsistent state legislation.[17] The deference here paid to the states appears to be due to economic variations within the country, rather than to legal restraints upon the powers of the central authority.[18]

Mexico and Venezuela. Mexico is not a member of the International Labor Organization. At the present time, however, the government is drafting a complete national labor code (a part of which has been adopted by the Chamber of Deputies), which will fulfill the requirements of a number of the international conventions. All legal barriers confronting ratification of the agreements were removed by a constitutional amendment in 1929.

Venezuela has ratified none of the labor agreements, because of economic difficulties.[19] The fact that the government has been under an actual dictatorship for the past twenty years makes any study of constitutional problems virtually useless.

Canada. The treaty-making power of Canada extends to all subjects within the legislative control of the Dominion, and the government at Ottawa may take all steps necessary to fulfill the obligations of the treaties to which it is a party.[20] However, whether the Dominion has power to adhere to a convention dealing with a subject which lies wholly within the competence of the provincial legislature is a matter of sharp controversy.[21] In practice, the Dominion usually declines to

[17] Barbalho, *Constituicao Commentarios* (2nd ed., 1924), p. 149 ff.

[18] James, *The Constitutional System of Brazil*, p. 109, gives a brief discussion of the states in Brazil.

[19] *Report of the Director* (1924), p. 156.

[20] British North America Act, Sec. 132.

[21] Keith, *Responsible Government in the Dominions*, II, 1122.

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adhere to such treaties unless the provinces signify their willingness to have it do so.[22]

Immediately after the conventions adopted by the first labor conference were submitted to Canada, the International Labor Office was informed "that the hours-of-work draft convention, as well as four of the other draft conventions adopted at Washington, is within the competence of the provincial authorities."[23] Of the conventions drafted since 1919, the Dominion government has ratified those dealing with unemployment indemnity, minimum age for seamen, minimum age for stokers and trimmers, and the medical inspection of seamen—all of which were within the jurisdiction of the central authorities.[24]

In 1924, reference was made to the Supreme Court of Canada to determine the relative powers of the Dominion and the provinces to meet the obligations assumed under the International Labor Organization. The unanimous judgment of the court was that in so far as the conventions dealt with matters under its legislative control, the Dominion was at liberty to adhere; but if the subject-matter lay within provincial competence, the Dominion could not bind the provinces without their consent.[25]

Among the provinces, British Columbia has adopted an act which meets the provisions of the international agreement regarding hours of work, and Nova Scotia and Saskatchewan have adopted the principles of the agreement on agricultural education.[26] A federal-provincial conference, held in 1924, discussed the possibility of mutual action upon several of the agreements, but no policy was formulated.[27]

Australia. Most writers on the government of Australia agree that the power of the Commonwealth over "external affairs"[28] does not include the right to contract international agreements which involve matters reserved to the states.[29] Since the labor conventions in almost every case deal with matters which, in Australia, are under state

[22] Lefroy, *Constitutional Law of Canada* (1918), p. 174.
[23] *Report of the Director* (1921), p. 87.
[24] *Ibid.* (1930), p. 132.
[25] *Canadian Annual Review* (1925-26), pp. 287-288.
[26] *Report of the Director* (1925), p. 314.
[27] *Ibid.* (1924), p. 243.
[28] Constitution of Australia, Art. 51, sec. 9.
[29] Moore, *The Constitution of the Commonwealth of Australia,* p. 489; Quick and Garran, *The Constitution of Australia,* p. 362; Keith, *The Constitution, Administration, and Laws of the Empire,* p. 229.

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jurisdiction, the attitude of the Commonwealth in declining to adhere is not surprising. The prime minister informed the Labor Office in 1925 that it was for "each of the federal states of the Commonwealth to examine the extent to which the draft conventions adopted at Washington shall be ratified or applied."[30] The Commonwealth ratified the convention on the employment of seamen, a subject which fell within its jurisdiction. All other agreements, however, have been referred to the several states for action. While only a few of the conventions have been adopted by them, the Commonwealth government has reported that, because of the advanced stage of social legislation in Australia, the provisions of thirteen of the conventions were already being fully satisfied by the regulations of the states.[31]

Switzerland. Switzerland has been active for many years in seeking to secure international coöperation in the regulation of labor problems. The Berne convention of 1906 regulating the manufacture of phosphorus matches is a concrete expression of that great interest. In dealing with the agreements drafted by the international labor conferences, Switzerland has shown a most friendly attitude.

The treaty-making power in Switzerland is broad, and includes subjects under the control of the cantons as well as those under federal jurisdiction.[32] Yet, as a matter of fact, the central government is careful to negotiate treaties only upon subjects within federal jurisdiction, and for this reason the Swiss government has declined to ratify a number of the conventions. With regard to the ratification of the agreement upon the period of weekly rest, the government reported that "the adherence of Switzerland would, in the view of the Federal Council, only be possible on condition that undertakings under cantonal authority could be excepted from the field of application of the convention."[33] The same view was expressed as to the conventions concerning night work for women and the employment of children in agriculture.[34]

The Federal Council has, however, ratified six of the conventions, among which those on unemployment, minimum age in industry, and

[30] *Report of the Director* (1925), p. 246.

[31] *Ibid.* (1930), pp. 99-132.

[32] Triepel, *Völkerrecht und Landesrecht*, p. 357; Blumer, *Schweizerisches Bundesstaatsrechtes*, pp. 228-233; Fleiner, *Schweizerisches Bundesstaatsrechtes*, p. 55 ff.

[33] *Report of the Director* (1924), p. 197.

[34] *Ibid.* (1924), pp. 241, 252.

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workmen's compensation are the most important.[35] A number of other conventions have been adhered to in part, or have been fulfilled by the laws of the cantons. The Federal Assembly deliberately advised against the regulation of hours of work, however, on the ground that such regulations would not be economically possible until competing nations should take similar action.

Germany. Under the constitution of Weimar, the German republic is practically a unitary state.[36] The central authority is entrusted specifically with broad powers, and, further, is granted blanket authority over "social welfare," a phrase which is capable of elastic interpretation.[37] The powers of the states under the new constitution have been restricted rigorously, and the authority of the central government over labor problems has been correspondingly enlarged.

There is no doubt that Germany is legally capable of subscribing to any or all of the labor treaties.[38] Already, fifteen conventions have been ratified, among which are those on unemployment, workmen's compensation, equality of treatment for foreign and domestic laborers regarding accident compensation, etc.[39] No question of the rights of the states has been raised, and it will not be necessary for the national government to decline ratification for lack of competence.

It may be said, in summary, that Australia and Canada are the only federations whose power to adhere to the international labor conventions is legally limited by the states. The United States, Brazil, Switzerland, and Mexico will probably find it legally possible to adhere without regard to the constituent states; but the practice in these federations will no doubt be to decline to ratify formally if the subject of the treaty should lie within the legislative powers of the states. In Germany, Venezuela, and Argentina, the federal type of organization leaves the treaty-making power legally unaffected. Yet, on the whole, the federal governments will find adherence to the labor treaties a more difficult matter than will unitary governments; and in the former, legal barriers may well prove of greater importance than economic restraints in the regulation of labor problems.

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[35] *Ibid.* (1930), p. 132.
[36] Oppenheimer, *The Constitution of the German Republic,* p. 21 ff.
[37] Constitution of Germany, Art. 9, sec. 1.
[38] *Ibid.,* Arts. 45, 78.
[39] *Report of the Director* (1930), p. 131.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

By vote of the Executive Council, the next annual meeting of the American Political Science Association will be held at Washington, D.C., on December 28-30. The chairman of the committee on program is Professor John M. Gaus, of the University of Wisconsin.

Professor Charles C. Hyde, of Columbia University, has been appointed the American member of the international commission provided for by the conciliation treaty between the United States and Venezuela.

Dr. William Y. Elliott has been advanced from an associate to a full professorship of government at Harvard University.

Dr. Charles W. Pipkin, of Louisiana State University, will be visiting professor of social legislation at Columbia University during the next academic year.

Professor Arthur W. Macmahon, of Columbia University, will serve as acting associate professor of government at Stanford University during the coming summer quarter.

Professor George H. Blakeslee, of Clark University, has been appointed Frank B. Weeks visiting professor at Wesleyan University for 1931-32. He will give courses on international law and international relations.

Dr. Robert S. Woodworth, professor of psychology in Columbia University, has been elected president of the Social Science Research Council in succession to Dr. Edwin B. Wilson, professor of vital statistics at Harvard University. Dr. Woodworth will continue to carry on part of his work at Columbia.

Dr. Allen Johnson, who died in Washington in January, has been succeeded as editor of the *Dictionary of American Biography* by Dr. Dumas Malone, co-editor since 1929. The sixth volume of the *Dictionary* appeared in February, and the seventh is now in press.

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During the current semester, Professor Johannes Mattern, of the Johns Hopkins University, is conducting a graduate course in international law at the law school of Georgetown University. He has received an initial grant from the Social Science Research Council for a study of the judicial system of Germany and will begin his investigation during the coming summer.

Dr. Arthur L. Goodhart, formerly professor of law at Yale University, and more recently a barrister of the Inner Temple in London, has been elected professor of jurisprudence at Oxford University. Since 1925, he has been editor of the *Law Quarterly Review,* the organ of the British legal profession.

Professor Clyde L. King, of the University of Pennsylvania, occupies the post of secretary of revenue of Pennsylvania, under appointment by Governor Pinchot. In the previous Pinchot administration, Dr. King served as secretary of the commonwealth and drafted the budget system now in use in the state. Dr. Edward B. Logan, assistant professor of political science at the University, has been appointed secretary of the budget of Pennsylvania.

Dr. Joseph R. Starr, instructor in political science at the University of Minnesota in 1929-30, is at present studying in England and France on a Social Science Research Council fellowship, but will return to the University in the fall as assistant professor of political science. He will offer courses in the fields of comparative government and political parties.

Professor Linden A. Mander, of the University of Washington, is visiting professor at the University of Hawaii during the spring and summer quarters, and Professor Paul S. Bachman, of the University of Hawaii, is visiting professor, in exchange, in the department of political science at the University of Washington.

Professor Charles E. Martin, of the University of Washington, will be a visiting professor at the University of Southern California during the summer of 1931, and Dean William H. George, of the University of Hawaii, will be a visiting professor of political science at the University of Washington. Professor Francis G. Wilson, of the latter institution, will give courses in the summer session of the University of Oregon.

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Dr. Louis K. Manley, dean of the school of business administration at the University of Pittsburgh, has resigned in order to spend some time in the study of political matters in Europe.

Dr. Walter R. Sharp, fellowship secretary of the Social Science Research Council, and Dr. Edwin E. Witte, director of the Wisconsin Legislative Reference Library, will be members of a party visiting Europe during the summer under the auspices of the Carnegie Endowment for International Peace.

Professor Allan F. Saunders, of the University of Minnesota, has accepted a call to Scripps College, at Claremont, California.

Mr. Edwin O. Stene, instructor at the University of Minnesota, and a candidate there for the doctor's degree in June, has accepted an instructorship in political science at the University of Cincinnati.

Professor Louis B. Schmidt, of Iowa State College, will conduct courses in American history and international relations at the University of Alabama during the coming summer session.

Mr. Donald Burke has been appointed instructor in political science at the University of Pennsylvania. He is a graduate of the Wharton School of the University and of New York University Law School, and has practiced law for several years in Philadelphia, taking an active part in local politics. Mr. William E. Lingelbach, Jr., has resigned as an instructor in international law, and has been succeeded by Mr. Edward Evans, a graduate of Haverford College and of the Pennsylvania Law School.

The Bureau of International Research of Harvard University and Radcliffe College has made a grant to Professor Carl J. Friedrich, assistant professor of government at Harvard, to enable him to complete his comparative study of the conduct of foreign affairs under parliamentary governments. The study includes England, France, Germany, Holland, Belgium, Denmark, Sweden, Norway, Czechoslovakia, and Austria. Professor Friedrich expects to be in Europe during the academic year 1931-32.

A conference of teachers of political science in the universities, colleges, and normal schools of Pennsylvania was held at Harrisburg on April 2-3. One session was devoted to financial problems of the state

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of Pennsylvania; a second, to electoral reform and the proposed election code; and a third, to the public utility problem in Pennsylvania. It is planned to continue the conference from year to year.

The *Canadian Historical Review* will publish in September its annual list of master's and doctor's theses in preparation on subjects relating to Canadian history, government, and economics. Titles of theses to be included in the list should be reported to Miss Alison Ewart, University of Toronto, Toronto, Canada.

Gifts totalling $150,000, from Ohio civic and industrial leaders, were announced in February by the Institute of Law of the Johns Hopkins University, and are to be used to promote studies of records and statistics of civil, divorce, and criminal litigation in Ohio.

Under the auspices of the School of Public and International Affairs at Princeton University, a conference on the press was held at Princeton on April 23-25. Among features of the program were a lecture on the growth of public opinion in China, by Professor Leonard Hsu, of Yenching University; a session presided over by Mr. David Lawrence, of the *United States Daily,* on the press and the government; and a session addressed by Mr. J. V. A. MacMurray and others on the press in international relations.

The Chicago police survey, which was made by Mr. Bruce Smith, of the National Institute of Public Administration, and a special staff composed of Messrs. L. S. Timmerman, Earle W. Garrett, Arnold Miles, Donald C. Stone, and Kenneth A. Rouse, has been completed, and the results are set forth in a volume entitled *Chicago Police Problems* (University of Chicago Press).

The honorary political science fraternity, Pi Sigma Alpha, which now has chapters in seventeen of the larger universities, held its first national convention at Cleveland on December 30. Officers elected were: Professor C. Perry Patterson, of the University of Texas, president; Professors C. W. Pipkin, of Louisiana State University, and Francis G. Wilson, of the University of Washington, vice-presidents; Professor Harvey Walker, of Ohio State University, secretary-treasurer; Miss Dorothy Jean Painter, of Ohio State University, national editor; and Messrs. Paul K. Walp, of the University of Kentucky, Campbell B. Beard, of Brown University, and Harwood Childs, of Bucknell University, members of the executive committee.

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Under the auspices of the department of political science of Ohio State University, a meeting of teachers of political science in Ohio colleges was held at Columbus on April 3-4 in connection with the spring meeting of the Ohio College Association. Principal addresses were delivered by Professor Harold J. Laski, at present lecturer at Yale University, and Professor Thomas H. Reed, of the University of Michigan. A special round table on training for public service was held on the closing day of the meeting.

The Institute of Public Affairs, held annually at the University of Virginia, will extend this year from June 28 to July 11. As usual, there will be both public addresses and round tables. Among the latter will be one on law enforcement, led by Professor Raymond Moley, of Columbia University; one on our Latin American relations, led by President Herman G. James, of the University of South Dakota; another on problems of municipal administration, led by Professor Thomas H. Reed, of the University of Michigan; and one on regionalism, led by Mr. Lewis Brownlow, of Chicago. Dean Charles G. Maphis continues as director of the Institute.

At a meeting of the State Conference of Louisiana Teachers of the Social Sciences, held at Baton Rouge, April 10-11, two addresses were delivered by Sir Herbert B. Ames, treasurer of the League of Nations in 1919-26; and discussion sessions were devoted to a number of questions such as the relations of the Southwest and of Louisiana to the rest of the world, methods of making problems of public life real to the student, and the teaching of citizenship in terms of American life of today. Professor Charles W. Pipkin was chairman of the committee in charge.

The ninth annual session of the Academy of International Law at The Hague will extend from the coming July 6 to August 29, the period being divided into two terms of equal length. As heretofore, instruction will be given in French, and will be suited to all who possess some knowledge of international law. The long list of lecturers includes Professor James W. Garner, of the University of Illinois, on recent tendencies in international law, and Professor Ernest M. Patterson, of the University of Pennsylvania, on the economic bases of peace. Persons desiring to attend should apply to the secretary of the Managing Board of the Academy, Room 50, Peace Palace, The Hague, giving full name, nationality, occupation, and address.

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The twenty-fifth annual meeting of the American Society of International Law was held in Washington on April 23-25. The principal subjects which appeared on the program were: obligatory jurisdiction of the Permanent Court of International Justice, Amos J. Peaslee, of the New York Bar; the "Root formula" for the accession of the United States to the Court, Philip C. Jessup, of Columbia University; the independence of the Court in its constitution and jurisdiction, and in the law to be applied, Manley O. Hudson, of the Harvard Law School; the policy of the United States in recognizing new governments during the past twenty-five years, Green H. Hackworth, of the Department of State; and the legal position of war and neutrality during the last twenty-five years, Charles E. Martin, of the University of Washington.

A conference on university training for the national service will be held at the University of Minnesota, July 14-17. Among the participants will be representatives of the United States Civil Service Commission and of several departments of the national government, several presidents of universities, deans of colleges, and heads of departments interested in special lines of training for national service, representatives of the committee on public administration of the Social Science Research Council, and the members of the sub-committee on personnel of the Committee on Policy of the American Political Science Association. The conference will deal not only with training in public administration, but also with training in law, medicine and public health, engineering, economics, agriculture, and several other specialties. In preparation for the conference, research work is being done in Washington and at the University of Minnesota, with a view not only to finding what specialized training is now being offered in universities for different branches of the national service, but also to ascertaining the number of different types of positions available in the national service, the entrance requirements, and other conditions affecting such employment. Members of political science departments and others interested in training for the public service are invited to attend.

Progress Report of the Committee on Policy. The American Political Science Association's new Committee on Policy held its first meeting at Princeton University on February 13 and 14, the following members being present: Edward S. Corwin, Frederic A. Ogg, Thomas H. Reed, W. F. Willoughby, Charles A. Beard, Charles E. Merriam, Harold W. Dodds, B. F. Shambaugh, Arthur N. Holcombe, Isidor Loeb, William Anderson, Luther Gulick, and Harvey Walker. The

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larger part of the time was devoted to meetings of the four sub-committees, each of which developed a definite program of work and was allotted an appropriation from the funds of the Committee for carrying it on.

The sub-committee on research proposes (1) to secure information regarding the directions that political science research can most profitably take, and (2) to prepare aids to students, particularly younger students, in undertaking and prosecuting political science research. The first of these ends it hopes to attain by securing from a selected body of mature students and productive scholars among American political scientists, and from eight or ten leading students of political science abroad, articles of specified length setting forth the topics of inquiry which each believes important, why he believes them important, and the general character of the recommended studies. The sub-committee felt that it was desirable to offer an honorarium of one hundred dollars to each of the foreign scholars whose contribution is solicited. It is hoped that the result of this inquiry will be a symposium of highly stimulating and informative character that will be published as a volume. The sub-committee also proposes to prepare a selected bibliography of political science and a handbook for political science research workers containing information concerning agencies engaged in research, periodicals, serials, source materials, fellowships, etc., which will aid scholars in planning their work.

The sub-committee on personnel decided to proceed with the placement service for teachers of political science which had already been tentatively undertaken. It proposes to investigate the number and types of positions available and the training now required for such positions, particularly in college teaching, but also in the public service. It further plans to prepare a general research program dealing with training for the public service, to be carried out in conjunction with other organizations. The sub-committee is in favor of having those who enjoy the advantage of the placement service pay a small fee therefor; and a recommendation to this effect will be presented to the Council at its next meeting.

The sub-committee on publication decided to recommend that, beginning with the year 1932, six, instead of four, numbers of the *Review* be issued annually, and that six hundred dollars annually be appropriated from the funds of the Committee on Policy for editorial assistance. It also considered the publication of a political science classics series, a political science monograph series, and a political science docu-

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ment series, and decided to send a questionnaire to the members of the Association for an expression of their opinion on these matters.

The sub-committee on political education has divided its work into two parts: (1) the promotion of the teaching of political science in elementary and high schools, and (2) the organization of a number of regional conferences each year on governmental topics, composed of fifteen to twenty politicians, officials, interested laymen, and political scientists, the aim being to foster close personal contact between prominent political scientists on the one hand and the officials and politicians on the other—groups that nowadays not uncommonly regard one another with distrust.

After hearing these reports, the Committee on Policy adopted the following budget:

Sub-committee on Research	$ 3,500
Sub-committee on Personnel	1,775
Sub-committee on Publication	750
Sub-committee on Political Education	5,500
General Chairman (office and travel)	1,500
Total	$13,025

The balance of the grant from the Carnegie Corporation is left unappropriated to cover emergencies and such further meetings of the general committee as may be necessary. Very little more time and money will be devoted to such meetings; there will probably not be more than one during the remainder of the year, perhaps in connection with the summer meeting of the Council. The sub-committees, however, are all vigorously at work. The Committee will welcome suggestions from any member of the Association as to methods and as to subjects to be dealt with.

THOMAS H. REED, *Chairman.*

University of Michigan.

Political Geography as a Political Science Field. "Physical environment never compels man to do anything; the compulsion lies in his own nature. But the environment does say that some courses of conduct are permissible and others impossible."[1] Do these words of Dr. Ellsworth Huntington apply to the political scientist's special preserve? Some geographers have thought so. They have written books designed to disclose relationships between physical environment and politics.[2] Geography departments occasionally offer university courses

[1] E. Huntington, *The Human Habitat* (New York, 1927), p. vi.

[2] Cf. I. Bowman, *The New World* (4th ed., Yonkers, 1928); E. Huntington and

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called "political geography."[3] Political scientists, on the contrary, seem to have paid less attention to the geographical implications of their subject. Upon repeated occasions, the writer has elicited reactions of astonishment and scepticism from friends and colleagues in response to the suggestion that regional geography is the "bed rock" upon which political science is founded. For this reason, he welcomed the opportunity to organize a course on "political geography" in the political science department at Stanford University during the year 1929-30. This note is inspired by the thought that the scope and initial results of this experiment may interest political science teachers and students elsewhere.

The following schematic diagram suggests the types of questions raised and discussed in connection with each political area studied:

Each of the following physical environmental factors	location	absolute	in relation to each and all of the following political factors	size of state
		relative		organization and administration of political authority
	land forms	size and distance		
		topography, seas, oceans and ports		spirit of government
	water bodies			political capacity of people
	resources	inland waterways		international importance of state
		soil		
		minerals		
		power		
	climate	temperature		
		moisture		
		winds		public policy
		variability		

S. W. Cushing, *Principles of Human Geography* (2nd ed., New York, 1922), Chaps. XXI-XXII. Many others might be cited.

[3] Such courses are advertised by the geography departments of the University of Chicago, the University of Nebraska, and the University of Washington. Further search might reveal others.

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The size of a state and the nature of its boundaries often exhibit relationships to geographic facts. It is obvious that its island seat limits the size of the United Kingdom, or that the Pyrenees mountains form a "natural" boundary between France and Spain. Other correlations of this character may be more obscure. The political importance of such factors appears frequently, as, for instance, in the Italian insistence upon certain frontiers in the Alps, or the French desire to extend territorial sovereignty to the Rhine.

The articulation of physical environment with the organization and administration of political authority upon a national or an international scale is a matter of fundamental concern to the student of politics. Distance and area may impose real limitations upon the efficiency of civil administration. Tendencies toward federal centralization in the United States, the regionalist movement in France, and plans for devolution in Great Britain undoubtedly have geographical connotations as yet largely unexplored. Regional planning, whether on a municipal or on a grander scale, must inevitably take account of the physical advantages and limitations of the area under consideration.[4] Political sectionalism and sudden shifts in partisan allegiance may likewise depend upon climatic or other physical factors to an extent as yet insufficiently recognized.[5]

Most illusive is the matter of the "spirit of government." Latin American peoples have failed to work political institutions patterned more or less closely after the North American model with anything like the results attained in this country. New Zealanders and Australians have developed traditions regarding the scope of governmental operations quite foreign to Anglo-Saxon notions elsewhere. In the United States, there exist deep-seated beliefs regarding the principle of democratic government, personal liberty, governmental interference with business, and many other matters. It is well to inquire to what extent typical American stereotypes may have been conditioned by an abundance of cheap land, great natural wealth, a variable and stimulating climate, and a location generally suited to industry and commerce; and to ask similar questions regarding the prevailing spirit of the governments of other lands.

[4] Cf. B. Mackaye, *The New Exploration* (New York, 1928).

[5] Cf. J. D. Barnhart, "Rainfall and the Populist Party in Nebraska," *Amer. Polit. Sci. Rev.*, XIX, pp. 527-540 (1925); and E. Krehbiel, "Geographic Influences in British Elections," *Geog. Rev.*, II, pp. 419-432 (1916).

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It is in the realm of public policy, however, that geographic inquiry may contribute most to the science of politics. Thorough and accurate knowledge of the physical environment of a country, together with information concerning economic and social adjustments thereto and the technological possibilities of improving such adjustments, will enable the student of public policy to make predictions regarding the results to be expected from any line of governmental policy adopted or under consideration. Mention need be made of only a few such subjects of inquiry, e.g., the five-year plan in Russia, the land policy of Mexico, the Canadian system of federal subsidies, the Italian insistence upon naval parity with the French, the development of democratic, constitutional government in Central America. The list might be extended indefinitely. In fact, geographical knowledge is a *sine qua non* for the political scientist who seeks to comprehend the foreign or domestic policies of any state.

The foregoing suggests only a few of the immensely important and intriguing questions considered in the Stanford political geography course. Happily, the initial success was sufficient to justify continuance. During 1930-31, the course has been greatly expanded and offered to a large class of undergraduate and graduate students. An advanced course on the Pacific basin was advertised for the spring quarter; and already a number of graduate students have made arrangements to include political geography in their list of major fields.

It is the writer's belief that political geography should become an established political science field, and that it should be taught in political science, and not in geography departments, by men broadly prepared in geography and economics, as well as in traditional political science. The possibilities of developing this field, and the training of persons competent to direct such studies, might well enlist the interest of scholars devoted to the advancement of political science—in particular, those who have curricular responsibilities in our colleges and universities.

HAROLD H. SPROUT.

Stanford University.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The Ethical Basis of the State. By WESTEL W. WILLOUGHBY. (New York: The Macmillan Company. 1930. Pp. viii, 460.)

"The most conspicuous attribute of the state is its coerciveness". Whatever its form or range of activity, political government is an instrumentality through which some individuals exercise over others a control sustained by physical penalties. This physical coercion, though its "utility" and "essential rightfulness" is "in general recognized," is "painful and irksome." Rational beings, therefore, inquire what "ultimate good" justifies the immediate evil of political coercion. Professor Willoughby first surveys anarchist, socialist, historical, divine-right, force, patrimonial, organismic, German transcendentalist, Italian Fascist, social-compact, and other ideas concerning the right of the coercive state to exist, the justification of particular forms of its organization or location of control, and the criteria for estimating the ethical character of particular political policies. Here, for the most part, he reviews familiar theories, but he puts them together in a new light. There may be minor criticisms of his allotment of space. He deals with Hobbes, Locke, and Rousseau in possibly needless detail, and he gives slight consideration to Plato and Aristotle, the utilitarians, and the Oxford idealists. Thomas Hill Green's general ethical doctrine is stated, but not his political applications of the doctrine.

In four chapters, Professor Willoughby sets forth his own views as to the "true basis" of the "right," "legitimate ends," and "legitimate sphere" of political coercion, and as to how far the true basis determines some right form of government. Any theory of ethics, he argues, has to begin with man in society, not with some imaginary picture of an isolated, self-sufficient individual. Outside of a man's relations with his fellows, there is no such thing as a moral right or obligation. But men in society come into conflict with one another as to their real or imagined interests; and they are not always willing to compromise, or they do not agree as to the mutual forbearances necessary for compromising the conflicts. Accordingly, compulsion is inescapable. The forms of the compulsion are manifold. The state has no monopoly of it. The community punishes directly by its censures and boycotts. In some matters, the objects for which social compulsion is

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rightly exercised are best served by the physical penalties applied by the organized force of the state. There are no absolute principles that render legitimate or illegitimate the application of political coercion in reference to certain matters or purposes. Wherever the exercise of state authority tends to promote the welfare of men in society, it is ethically justified. Moreover, there is no universal rule that determines the right form of political government. That form is best which under the given conditions serves best for discovering and effectively executing the policies necessary for carrying out the legitimate ends of the state. Nor is there any absolute ethical obligation upon the individual to obey the commands of political authority. Each individual has at times the moral right or obligation to disobey his government or seek its overthrow. In this as in every other moral decision, he has to weigh all the relevant facts. The political command and the possible consequences of a defiance of it have to be considered and balanced with other facts. But the public official has the same sort of moral right and obligation when he decides how far to tolerate or restrain an act of disobedience or revolt; the good motive and reasoned judgment of a resisting citizen is significant, but it is not the only important fact to be appraised in making the decision.

Here, then, Professor Willoughby has set forth a thoroughly empirical, pragmatic, flexible conception of the competence of political authority. The book does not, however, satisfy the fervent anti-Austinian. For in the last three chapters the author analyzes recent theories that insist upon the legal subordinacy or parity of the commands of the state in relation to certain other forms of social pressure: Duguit's "realistic," "objective," necessary "laws of social solidarity;" Krabbe's rules "springing from men's feeling or sense of right;" and the group allegiances defended by Figgis, Laski, the syndicalists, and the guild socialists. In this connection, he briefly restates his familiar view that questions of ethical right, or of social necessity or utility, are not the same as questions of legal obligation; all these questions are essential parts of a complete study of the actual state, but there are practical advantages in distinguishing them. Professor Willoughby's insistence upon the distinction implies—some of his critics charge—a belief on his part that "a theory of the state is primarily a matter of jurisprudence." The work in hand, and at least two of his earlier volumes devoted to other than the juristic aspects of state theory, refute the charge.

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The author has given a clear and independent analysis of one of the oldest and most persistent of all political questions. Although in most of the chapters he centers the discussion upon the theories of others, his own critical appraisals appear at every essential point.

FRANCIS W. COKER.

Yale University.

The American Public Mind. By PETER ODEGARD. (New York: Columbia University Press. 1930. Pp. ix, 308.)

Psychopathology and Politics. By HAROLD D. LASSWELL. (Chicago: University of Chicago Press. 1930. Pp. ix, 285.)

"Public opinion" is the current vogue in political science. But "there's a reason" for other things besides grape nuts. Disillusionment led to analysis of the tacit assumptions behind our fathers' creed of democracy. It became clear that "public opinion" was a combined *deus ex machina* and Oversoul. What was an "opinion" anyway? The childhood game of "Thimble" was revived as: "Public, public, who has the public?" It gradually was made plain that both terms were highly abstract symbols which were commonly used as nomads, mendicants, hypostatizations, and all the other degenerates of which Ogden and Richards wrote in their *Meaning of Meaning*. So at last political scientists were forced to seek light upon these political mysteries by turning to other social sciences. For example, in place of "the" public, they learned from the sociologists of "groups" as names for organized relations; and, in place of "the" opinion of "the" public, they learned from the social psychologists of "habitual attitudes" developed from contacts with the social environment. They stopped assuming that every name must have a corresponding "entity" for which it was their task to search while seated at office desks. They saw that they needed to investigate relations and resulting attitudes. Just now they are engaged in seizing every hypothesis in sight which promises to shed any light upon the factors that determine formal votes and governmental decisions—political behavior—under universal suffrage.

To this contemporary phase, Professor Odegard's book belongs. It advances no new hypothesis to startle. But it serves a very useful purpose in presenting within brief compass a sane summary of pertinent facts and conclusions about each of several major factors which go into the molding of the American "public mind." These are the fam-

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ily, the church, the school, the press, political parties, pressure-propaganda groups, the motion pictures, the radio, and books. There are introductory chapters on "The Foundations of Personality" and "Social Behavior," and a final chapter on "Censorship and Democracy." The bibliography is valuable.

The reader comes away reconvinced that "public opinion" is a short-hand symbol for an exceedingly complex and variable "referent." For this reason, he does not blame Professor Odegard because he also comes away wondering about the relative weights of the several factors. The volume furnishes the most useful starting point for a study of "public opinion." This is because it combines brevity, range, a wholesome approach, an arresting style, and a host of suggestions for special studies.

Professor Odegard remarks: "It is too early to eliminate the idea of mind altogether" (p. 22). The sentence contains a false assumption which is exposed by Clarence I. Lewis in his masterful *Mind and the World-Order* (p. 5).

Professor Lasswell breaks new ground for American political science. Those members of the profession who scorn psychology even while they make unexamined assumptions about political behavior will not enjoy his book. "We want," says the author, "to discover what developmental experiences are significant for the political traits and interests of the mature." Beyond that, "we want to see whether the intensive investigation of life-histories will in any way deepen our understanding of the whole social and political order" (pp. 8-9). He cites the case of the busy man who was always ready to devote time to the aid of the blind. This is explained by a "critical experience": when he was between three and four years of age, his little sister pulled an eye out of his favorite cat (p. 8). "The psychopathologist has had the great advantage of seeing many trends of the personality which are normally subordinated to other trends when they have escaped from control and achieved Gargantuan proportions" (p. 16). A considerable account of the work of Freud and others leads to a "general formula" which "expresses the developmental facts about the fully developed political man" (p. 75). This is p]d]r=P, where p=private motives; d=displacement onto a public object; r=rationalization in terms of public interest; P=the political man; and]=transformed into. "Impulsively killing a king who happens to insult one's sister does not make a politician out of the regicide" (p. 76). Ninety-five pages are devoted to illustration of this formula by actually observed cases

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under the three headings "political agitators," "political administrators," and "political convictions" (Chaps. VIII-X). These illustrations are intended to emphasize the value of the "technique of free-fantasy" as contrasted with "logical thinking" (Chap. III, p. 32), and of the "prolonged interview" as a source of empirical material for political science (Chap. XI, Appendix B).

If the reader wishes to know the sense in which Professor Lasswell uses the term "political," he may turn to Chapter IV. Here the author invites study of the customary "typologies" as "stereotypes." Professor Munro's description of the "reformer" is given as an example. Carlyle's stereotype "hero" is explained as compensatory idealization. Professor Lasswell then summarizes the more elaborate German classifications which recognize the "political man" in economics as well as the "economic man" in politics. His emphasis upon "developmental types" and particular examples prevents his falling into a fallacy so common before statistical logic began to replace Aristotelian class logic—namely, the fallacy of seeking to "discover" the "essential characteristics" of "types."

Finally, in Chapters X-XII Professor Lasswell attempts a reorientation which leads him to "The Politics of Prevention" and "The State as a Manifold of Events." A selected bibliography in Appendix A furnishes an introduction to a literature which is probably as unfamiliar to most American political scientists as it is to the reviewer.

Professor Lasswell has undoubtedly plunged deeply into psychoanalysis, and has come up with a real contribution to political science. This is not to say that his colleagues should take his hypotheses on faith for fear they expose their ignorance. It is merely to say that they should not go to the other extreme of condemning the book because it deals with the unfamiliar. What will come of it all, the reviewer is not prepared to say. Yet his imagination is challenged by the possibilities which Professor Lasswell opens up. That is more of a "contribution" than is to be found in most products of orthodox "research."

JAMES HART.

The Johns Hopkins University.

The Public and Its Government. By FELIX FRANKFURTER. (New Haven: Yale University Press. 1930. Pp. iv, 170.)

Professor Frankfurter's little volume is an outgrowth of the Yale citizenship lectures for 1930. Each such book of general lectures is in a sense *sui generis.* The single standard by which it can fairly be

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judged is that it must not repeat word-patterns of the current culture, but must above all be provocative of thought. Professor Frankfurter meets this test in an admirable manner. Any reader who brings ideas to the reading will find those ideas clarified by the author's vigorous manner of framing the issue fully as much where he disagrees as where he agrees.

Thus, Professor Frankfurter recounts in Chapter I the rather trite theme of increased governmental functions with a freshness and insight into the implications which disarm any fair critic. Only a dullard could miss the stimulating incisiveness of the author's comments. Clearly a chapter of this sort is written for precisely the purpose of suggesting the larger significance of the familiar.

The second chapter asks whether law obstructs government. The conclusion is that the "ample and flexible resources" of the written constitution "permit adequate response to changing social and economic needs" (p. 62). The trouble lies, not in the verbal symbols of the text, but at times in the men who interpret them. Several apt illustrations of "extra-constitutional forms of legal invention" are cited. "The Constitution provided for the future partly by not forecasting it, and partly by singularly shrewd devices that with time have become increasingly serviceable" (p. 73). Compacts between states and Supreme Court jurisdiction over controversies between states are examples of these "shrewd devices." Referring to judicial review of state statutes under the Fourteenth Amendment as the "most vulnerable aspect of undue centralization," the author states that since 1921, thirty per cent—in 1926-29, thirty-six per cent—of the state enactments before the Supreme Court were "offensive to the requirements of due process." "Since 1920 the Court has invalidated more such legislation than in the fifty years preceding" (p. 47).

The author is impatient with those who would change "the mechanical requirements of treaty-making" (p. 57). He looks to presidential leadership in foreign policy and "continuous education against provincialism and chauvinism" rather than to "mechanical reforms." To the reviewer, this disdain of procedure seems too cavalier. The Articles of Confederation were wrecked on the rock of the amending process. One may admit that the abolition of the two-thirds requirement for treaties will not of itself give us an enlightened foreign policy. At the same time, one may hold it unwise to stack the cards in favor of the provincials and chauvinists. A premium is thereby placed upon obstructionist propaganda.

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The author also protests against "mechanical tinkering with the machinery of criminal justice" as prescribed in the Bill of Rights (p. 60). The reviewer shares his emotional loyalty to these time-honored safeguards. Yet the author's own first chapter should save him from the dogmatic assumption that eighteenth-century protections fit twentieth-century needs. One can agree that abuse of power is still a danger, and that Mr. Whalen's ideas on liberty are unhealthy (p. 58), without impliedly opposing *investigation* of how best in the industrial era to insure a balance between effective crime control and adequate protection of the innocent. Again, "in many ways the center of gravity of our crime problems lies outside the court room" (p. 60). The fact that "the 'third degree' is widely practiced and often condoned" (p. 59) suggests that this is also true of the protection of liberty.

Professor Frankfurter calls the separation of powers "a 'political maxim' and not a technical rule of law" (pp. 77-78), apparently for the reason that it is not interpreted so as to obstruct government. It is a main thesis of this chapter that the "law" of the Constitution—especially the due process clause—does not of itself obstruct government, unless its interpreters make it do so. Why, then, single out the separation of powers as a mere "political maxim"? Apparently because the interpreters have not made it do so. The author is certainly entitled to this usage—according to which the due process clause would tend to become a mere "political maxim" if consistently interpreted according to the technique of Mr. Justice Holmes. Yet the reviewer suspects that this was not in Professor Frankfurter's mind. His reference to a "technical" rule of law suggests some idea of a formula that gives an automatic answer to all problems. To the reviewer, the difference is merely one of degree. The so-called "technical" rules of law leave a wider "margin of doubt" than is commonly supposed. Most of the time, Professor Frankfurter talks as if he agreed with the reviewer.

The chapter on public services is splendidly done. Current "pessimism" concerning government by commissions is examined. The New York Telephone Case is given as a concrete illustration of the worst aspects of utility regulation in action. Estimates of "fair value" of the company for rate-making purposes as of the same date varied from something under $400,000,000 in the opinion of a majority of the Public Service Commission to $615,000,000 according to the highest of two appraisals made for the company. "The heart of the difficulty is the current judicial approach to utility valuation" (p. 101). The

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utilities are warned that the doctrine of reproduction cost was first urged by Bryan after the panic of 1893, and that it may yet plague them if current economic conditions change. Holding companies and the power problem are handled briefly but suggestively.

Only a final word can be given to the last chapter on "Administration and Democracy." The need for science as a tool of the art of government does not mean "a new type of oligarchy, namely, government by experts" (p. 157). "The expert should be on tap, but not on top" (p. 161). "One of the shallowest disdains is the sneer against the professional politician" (p. 161). There is more; but let the reader take an evening off to read for himself. He will be well repaid.

JAMES HART.

The Johns Hopkins University.

Legislative Principles. By ROBERT LUCE. (Boston: Houghton Mifflin Company. 1930. Pp. vi, 667.)

Nine years ago, there was published the first volume of a work entitled "The Science of Legislation," which was undertaken with the purpose of "treating historically, descriptively, and critically the legislative branch of government in every aspect." This first volume, *Legislative Procedure,* has already been reviewed in these columns.[1] The second volume, *Legislative Assemblies,* appeared in 1924; while the third volume, *Legislative Principles,* which is the subject of the present review, has just issued from the press. The concluding volume, *Legislative Problems,* is still in preparation. Thus the ambitious and monumental enterprise of Mr. Luce progresses toward its goal.

Legislative Principles carries as its sub-title, "The History and Theory of Law-making by Representative Government." The author begins with an analysis of law, which he defines (p. 3) as "that which systematically impels conduct." He then examines the relation of law and custom, the development of the idea of representation, the origin and nature of constitutions, and other similar topics. Although the primary emphasis is placed upon representative assemblies and their work, such subjects as public opinion and the initiative and referendum are not omitted. Moreover, many pages are devoted to electoral questions, including proportional and occupational representation and corrupt practices legislation. Of special interest are the chapters on instruc-

[1] Vol. XVII, pp. 126-127 (Feb., 1923).

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tions in Congress, independence versus responsibility of legislators, and the right of petition.

Although Mr. Luce has had many years of experience as a legislator, both in Massachusetts and in Congress, this experience has not been drawn upon unduly. The book is no mere generalization from personal recollections, but is also the product of enormous reading and of delving into the history of institutions, particularly those of England and America. The index fairly bulges with the names of hundreds of persons whose opinions and writings are cited. The author, however, does not hesitate to state his own views after citing the arguments for and against the various theses which he examines. For example, Mr. Luce believes in the direct primary and in voting by mail, but is more doubtful as to universal suffrage. Proportional and occupational representation are viewed skeptically; for "the wolf wears sheep's clothing when minorities dominate in a democracy" (p. 286). The assumption of a larger and larger share of campaign expenses by public treasuries is looked upon with favor.

In a volume so broad in its scope, there are naturally various points that are open to criticism. To the reviewer, "legislative principles" suggests much more emphasis upon the nature and content of law than Mr. Luce gives. For example, administrative law is barely mentioned. And yet, is there not here a theory of lawmaking which is vitally connected with the work of representative bodies? The legislatures and legislative activities of cities and other local authorities receive scant notice, and the same may be said of municipal home rule. It is not suggested that the book should have been made into a *Corpus Juris* or commentary thereon; but the problems which confront legislative assemblies in various fields of law provide excellent material for the exposition of "legislative principles."[2] On the other hand, as actually written, a large part of the book seems to belong under the caption of "legislative organization." Should locality or population—should partisan or occupational grouping—be the basis of representation? Who should be permitted to vote for legislators, and what, if anything, is to be done about non-voting? These questions might well have been disposed of in the volume, *Legislative Assemblies*.

Various minor criticisms, also, may be noted. Occasionally a writer is quoted without giving the title and page of the work referred to

[2] See Ernst Freund, *Standards of American Legislation* (Chicago, 1917), Chap. VI.

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(p. 407). The feudal contract can scarcely be described as a "social contract" (p. 58). One does not ordinarily think of England as the home of "root and branch reform." Nevertheless, Mr. Luce states that "When once England attacks an evil, she is likely to go the whole distance. American legislatures and the American Congress are likely to cut off the dog's tail by inches" (p. 423).

These, however, are mere details. Viewing *Legislative Principles* as a whole, one may say that Mr. Luce has performed a very useful service to students of political science. He has drawn upon a great mass of material, has organized it and given it coherence, and has illumined it by thoughtful comment and discussion. If he has not accomplished all that he proposed, it is doubtless because of the magnitude of the undertaking.

ROGER H. WELLS.

Bryn Mawr College.

The Civil Service in the Modern State. By LEONARD D. WHITE and collaborators. (Chicago: The University of Chicago Press. 1930. Pp. xxi, 563.)

The Civil Service in Canada. By R. MACGREGOR DAWSON. (London: Oxford University Press. 1929. Pp. 266.)

The first of these volumes, sponsored by the International Congress of the Administrative Sciences at its third session in Paris in 1927, is a collection of documents, with interpretative introductory statements, presenting the law, administrative codes, or official reports applying to the civil services in each of fourteen countries or dominions, namely, Great Britain, Canada, Australia and New South Wales, United States, France, Belgium, Italy, Rumania, Switzerland, Germany and Prussia, Austria, Sweden, Norway, and Japan.

For most of the countries, the papers set forth the respective recruiting system, classifications of positions, and policies on salaries, tenure, removal, discipline, pensions, rights, and obligations. For the British service, along with materials assembled by Professor White, there are also the acts or reports upon the cost of living index applicable to salary adjustments, the National Whitley Council, the Industrial Court, trade disputes, and trade unions. In addition, there are selections from the Macaulay report of 1853, from which so many of the British policies have developed. For France, special attention is di-

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rected by Aubert Lefas to the legal status of civil servants and to their rights, guarantees, and obligations. Dr. Carl J. Friedrich, of Harvard University, has made available the constitutional provisions governing the German and Prussian civil services, the salary act of 1927, and documents governing works councils, federations of civil servants, and civil service academies. Australia, covered by Professor F. A. Bland, lecturer in public administration, University of Sydney, illustrates the creation of independent commissions charged with recruitment, promotion, discipline, and organization of personnel. The documents for Japan, translated by Sterling T. Takeuchi, research fellow at the University of Chicago, and for Belgium, those presented by Dr. Fernand Cattoir, also appear to be very complete.

The documentary character of the contents fills a long felt need for access to source materials. For the first time, it is possible to note readily the wording of the civil service law in other countries, if not to observe the actual practice. The materials are rich for the student of comparative personnel administration. It is a privilege to record gratitude to Professor White and his collaborators for their demonstration of international coöperative endeavor in completing this eminently useful compilation.

The first seven chapters of Dawson's work give a well documented history of the Canadian civil service, with emphasis upon the early struggles against spoils in appointments and upon the later development with its trials and tribulations in administering a merit system. The last seven chapters contain descriptions and the author's appraisal of the existing civil service system in respect to selection, gradation, promotion, salary, tenure, removal, retirement, the Civil Service Commission, and parliamentary government. In summary, there are general analyses and proposals for change or reform.

The Canadian civil service, springing from conditions in a new territory, has been influenced in its method of administration by both American (United States) and British experience. The American influence was particularly apparent during the early plastic period when Jacksonian attitudes appeared to be as acceptable in Canada as in the United States, and for more or less the same reasons. In later years, it was therefore natural that the Canadians should borrow heavily from the Americans in establishing a civil service commission and adopting vocational and occupational standards. But along with these influences, germane to the North American continent, there was also

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the ever-present strain emanating from the development of a civil service under conditions peculiarly British. It thus appears that the two phases, American and British, have to date brought forth a mixed system wherein the effects of the British civil service reform movement, as applied to Canada, have been weakened perceptibly. Conditions evidently were not ripe for adaptation. The net result as interpreted by the author is a gloomy one. The Canadian civil service, he concludes, has been, and still is, dominated by patronage. The structure is built upon fear. The Civil Service Commission, handicapped by a host of superimposed detailed tasks only remotely associated with recruiting, is playing a hard and difficult game against the inroads of the politicians. Solace is found in verses carefully selected from Gilbert and Sullivan operas and placed at the head of each chapter.

What of the future? The author advocates parliamentary reform, a restriction of the powers of the Civil Service Commission to examination for entrance, greater leeway for direct appointment by department heads, more latitude in personnel management for deputy ministers, more advisory committees, and, in summary, a revamping of public attitudes toward the public service, to permit greater flexibility in career possibilities and in the independence of the higher officials.

Throughout the book there is a spirit of impatience and dissatisfaction with present conditions. The recommendations for reform, however, are not very definite; they resolve themselves into generalities which in themselves suggest the all-inclusiveness of the theme of the civil service.

MORRIS B. LAMBIE.

University of Minnesota.

City Bosses in the United States; a Study of Twenty Municipal Bosses. By HAROLD ZINK. (Durham: Duke University Press. 1930. Pp. xi, 371.)

Professor Zink has given us a well-written book of great significance and interest—one that should be read widely, not only by teachers of political science, but by the laity as well. His twenty municipal bosses are broadly distributed geographically, as follows: (1) New York: Tweed, Kelly, Croker, Sullivan, Murphy, Olvany; (2) Brooklyn: McLaughlin; (3) Philadelphia: McManes, Durham, Vare; (4) Pittsburgh: Magee, Flinn; (5) Chicago: Lundin, Sullivan; (6) Boston: Lomasney; (7) Cincinnati: Cox; (8) St. Louis: Butler; (9) New

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Orleans: Behrman; (10) Minneapolis: Ames; (11) San Francisco: Ruef. They represent both parties, although that seems a quite negligible distinction; some of them were lone fighters, others headed long-established and efficiently managed machines. Most of them dominated entire cities, for a time at least; a few, on the other hand, controlled only wards or divisions, with such resourcefulness, however, as to entitle them to consideration as municipal bosses.

The sketches of these twenty men which Professor Zink presents are based on independent study of the sources; amid the clamor of crimination and recrimination naturally attached to such figures, he has kept his head admirably. Readers will finish each biographical chapter with but one regret, namely, that the author did not have space to tell us more. Without the appearance of striving for it, he attains a dramatic effect occasionally by the mere arrangement of his materials; note, for example, the concluding paragraphs regarding "Big Tim" Sullivan and "Senator" William Flinn. The chapters devoted to the five types from New York City, to which that on "Old Man" Hugh McLaughlin of Brooklyn may well be added, occupy more than one hundred pages, and cover a period of machine ups and downs stretching from 1868 to 1929. With additional material, they could easily be made the basis of an extended history of Tammany during the last six decades. One gathers that, with the exception of Croker, these metropolitan political leaders represent a certain progression in intelligence and morals, or, if not the latter, at least in caution. On the other hand, "Genial Doctor" Ames of Minneapolis, who retained office until 1902 and survived until 1911, seems to have been more deficient in all good qualities, including common decency, than any of the other municipal bosses discussed. Indeed, he is so aberrant along a number of lines as to suggest the question of whether he deserves to be counted as a boss, being rather a picturesque demagogue who for a time enjoyed a phenomenal run of luck. What will probably strike the reader most forcibly, however, are the really admirable traits displayed on occasion by several of the twenty, notably, Lomasney, Kelly, Olvany, McLaughlin, McManes, Vare, and Flinn.

The reviewer must apologize at this point for having fallen into a moralistic strain scarcely justified by the volume before him. On the contrary, Professor Zink deserves the highest praise for his severely objective and scientific treatment of the subject. Particularly is this to be observed in the first seven chapters, which are devoted to the

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analysis of his twenty bosses as to every obtainable detail of personal characteristic, domestic and social relations, and business and political activities. While necessarily lacking the charm of the biographical sections, this part of the work is admirably done. It upsets nearly all preconceptions regarding the "typical boss," especially as portrayed in the newspapers, and not a few of those held by political scientists. No future writer on the subject can afford to neglect the definite and detailed contribution made by Professor Zink. One can wish for nothing more, except perhaps that bosses might write their *Confessions* as fully as Jean Jacques Rousseau, or that each of them should have a Boswell attached to his bodyguard!

ROBERT C. BROOKS.

Swarthmore College.

Municipal Expenditures. By MABEL L. WALKER. (Baltimore: The Johns Hopkins Press. 1930. Pp. ix, 198.)

This thesis is an effort to measure the character of city government in terms of services and costs, and to indicate a proper balance between the functions performed. These are really two separate, but somewhat related, subjects.

For ten years or so, students of government have been toying with the idea of standards for measuring the quality of municipal services. Munro's twenty-five "criteria," the standards developed in the *Survey of Cincinnati and Hamilton County,* and Beard's *Survey of Tokio* are examples. The obvious shortcomings of these and other tests at least promoted further study of the subject. More recently, a sound foundation for measurements has been laid in the records and standards developed for public health, police, education, and street cleaning, in particular. But the lack of available standards is indicated by the numerous useful criteria which Dr. Walker was compelled to exclude. The original list was arbitrarily determined, and eliminated many services that might be considered as contributing to good government. Further eliminations were made, until the final criteria covered six services in public works, three in the field of protection, and four in education and recreation. To these, arbitrary weights were assigned; and the cities of the United States were then ranked accordingly. The result leads to the conclusion that the final bases did not represent a well-rounded program of municipal services—which is not Dr. Walker's fault. Facts cannot be created where they do not exist.

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As a discussion of the quantity and quality of comparable municipal statistics and an argument for the further development of measurements, this book is worth while. As a scientific effort to grade cities on the standards that were accepted, it is open to serious criticism. The effort to determine the proper distribution of the budget among the protective, commercial, educational, recreational, and cultural needs of a community—a problem which is very ably discussed in the earlier pages of the book—is highly interesting. The possibility of determining a proper distribution from the experience of superior cities is a valuable contribution, and should be further developed, with due consideration for the variables in the equation.

In spite of shortcomings, the thesis will stimulate new interest in developing a yard-stick for appraising government and in substituting facts and intelligence for prejudice and emotions in such appraisals. Such efforts should be encouraged.

LENT D. UPSON.

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The Law of Martial Rule. By CHARLES FAIRMAN. (Chicago: Callaghan and Company. 1930. Pp. viii, 263.)

This is a good book. In twelve chapters, Dr. Fairman examines with great care and meticulous scholarship the subject of martial law in the Anglo-American system of jurisprudence. These chapters deal with the historical background of martial law, its nature, the circumstances under which it is instituted and terminated, the tribunals through which it is administered, its application to particular situations, and other aspects. Each chapter is headed by a quotation from a court or other authority, so apt as to be virtually a text for (and sometimes even a summary of) the discourse that follows. Thus, as a heading for the chapter dealing with the effect of martial law on rights of liberty and property, appears this quotation from Justice Holmes: "When it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment" (p. 162); and for the chapter of conclusions, this from Lord Haldane: "We want the Army to be a popular institution, and not a menace to civil liberty" (p. 239). This serves, in the opinion of the reviewer, to suggest that Fairman has made of his book something more than a mere legalistic treatise, although it is primarily that in its form and substance.

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By the term "martial rule," used in the title and to a considerable extent throughout the book, Dr. Fairman clearly means "martial law," as that term is generally used and understood. His explanation for this (pp. 28-31) is acceptable enough, although it seems to the reviewer somewhat labored. It may be significant that in his own Foreword, the term "martial law" is used and the other term not at all. At any rate, the distinctions that matter, and that are frequently confused, namely, from military law and military government, are clearly made in brief paragraphs (pp. 39-43); the constitutional and statutory bases of martial law in the United States are carefully stated (pp. 78-84); the important cases involving its application and interpretation are well reviewed (notably the Milligan case, pp. 138-145).

But Dr. Fairman's particular contribution to this subject lies probably in his appreciation of the social implications of martial law or rule, as well as of its military and legal aspects. "Martial law is not a constitutional abstraction or a riddle for whose solution the law books will suffice. In American practice it is a clumsy *modus operandi* which has been hit upon in keeping industrial conflicts within some bounds. It has sometimes degenerated into a grim class struggle. When a movement—strike, racial unrest, or what not—threatens to destroy the social or economic equilibrium of a community, it will be resisted instinctively, often frantically, by those whose position is menaced. They have come to identify their own well-being with the public good. If they control the government they will employ its power to suppress the subversive movement. . . . How military force may be exerted when necessary to preserve ordered liberty without becoming arbitrary or biased is a problem which, to be settled rightly, will call for statesmanship of a high order" (pp. 27-28). Special attention is therefore given to those dramatic social and industrial struggles in Coeur d'Alene, Idaho, in Ludlow, Colorado, in Paint Creek and Cabin Creek, West Virginia, and elsewhere, all of which were handled eventually, and with varying degrees of success, by troops and by the application of martial law (pp. 68-78, 152-159). In the "nice balancing of relative social values" called for by situations such as these, the author is frank in concluding that "the state's power has not always been wielded with perfect impartiality" (p. 28), and that "the conduct of martial rule has sometimes been reprehensible, characterized by ignorance, class consciousness, or antipathy toward striking workers" (p. 241).

That it is sometimes necessary to use extraordinary measures must be admitted; but "the executive should be sure that it is indeed a

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crisis, and not merely a hallucination'' (p. 240). On the other hand, the public has to be protected against insurrections, riots, and the like; officers and soldiers may have to act summarily if they are to control the situation at all, and they ''cannot be required to weigh their measures with that scrupulous nicety which is to be expected in a court of law.'' In other words, the appropriate character of the martial rule to be applied must be determined in each situation by the necessities of that situation; and ''to hit the precise line which necessity dictates may indeed be difficult'' (p. 241). That task is not, in the opinion of the reviewer, essentially more difficult than many other tasks in constitutional law (such as reconciling police power and due process). Precise rules are no doubt impossible, and probably undesirable, since no one can foretell the kind of emergency to which martial law may need to apply. It should be quite possible, however, to take over the doctrine of reasonableness, even into this field of martial law, since, as Fairman points out, military officers have on the whole been ''notably temperate,'' while the much-vaunted orderly procedure of civil magistrates may often have been a ''delusion.'' The attempt to ''hit the precise line'' involved in the application of martial law is nothing but an attempt to solve ''the eternal conflict between the authority of the state and the liberty of the individual'' (p. 241), and the difficulty is that of an adjustment between two political philosophies.

An excellent bibliographical note is appended, as well as a complete table of cases and an adequate index, all of which increase the usefulness of the volume. Altogether, it is a good book on an important subject.

CLARENCE A. BERDAHL.

University of Illinois.

A Selection of Cases and Authorities on Constitutional Law. By OLIVER P. FIELD. (Chicago: Callaghan and Company. 1930. Pp. xliv, 1072.)

Other things being equal, the most recent collection of cases is the best. Professor Field has gone a long way, at least, toward making other things equal. His selection of recent cases is excellent—certainly it commends itself to the reviewer. Praiseworthy, too, is the idea of supplementing the cases with special studies on certain points of constitutional law. It is an idea which will be more extensively employed as recognition dawns that while the case system of instruction has indeed certain unique values of its own, it is not necessarily the

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best way of covering the entire field of law. Not every legal subject, nor every part of any legal subject, is worth the time required to explore it properly by the case method.

The main criticism to be levelled at Professor Field's collection is the indifference which it often manifests to the historical approach. Aristotle's admonition, "if you would understand anything, observe its beginning and its development," applies to the study of the law as perhaps to few other subjects; and *a fortiori,* in the case of the American student, to the study of constitutional law. To be indifferent to the historical approach, moreover, is to forego one of the main arguments for the case method as it was originally conceived.

Among the cases conspicuous by their absence from this collection are Chisholm v. Ga., McCulloch v. Md. (the second part of Marshall's opinion), Hylton v. U. S., Gibbons v. Ogden, State Freight Tax Case, Swift and Co. v. U. S. (declared by Chief Justice Taft, in Stafford v. Wallace, to have been "a landmark" in the interpretation of the commerce clause), Champion v. Ames, the Charles River Bridge Case (referred to in a foot-note), Stone v. Miss., the Slaughter House Case, the Civil Rights Cases (largely), Mugler v. Kan., Holden v. Hardy, Munn v. Ill., and Smyth v. Ames. According to Professor Field's publishers, "this book was prepared primarily for students in schools of political science." This purpose, to the reviewer, makes the omission of such formative cases as those just mentioned all the more regrettable.

"It is suggested without deciding"—to employ a merry conceit of the Court—that Professor Field has been unduly impressed by Justice Holmes' often quoted assertion that "general principles do not decide concrete cases." The fact of the matter is that the vast majority of cases are decided by well understood general principles before they get into court, and so they never get there; and even Justice Holmes is quotable for the admission that the Court is bound by "the plain meaning of plain words" (206 U. S. 240).

In short, Professor Field's collection caters rather too much to that mode of instruction which proceeds by keeping the student in a hub-bub of factitious excitement over the law's uncertainty, whereas it is often only the student's own ignorance which is being exploited.

EDWARD S. CORWIN.

Princeton University.

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Labor and the Sherman Act. By EDWARD BERMAN. (New York: Harper and Brothers. 1930. Pp. xviii, 332.)

This book is clothed with an air of authority. Professor John R. Commons writes an introduction to it of about a page; Professor Felix Frankfurter contributes a foreword of three pages; and the author acknowledges, in his preface, indebtedness to no less than a dozen persons. I take it that none of these persons assumes any responsibility for what Professor Berman says or neglects to say.

Professor Berman is convinced that "many of our outstanding economic problems . . . can be adequately studied only if one subjects the economic situations produced by the courts and the legislatures to a fundamental social-economic analysis" (Preface). In the book under review, the author undertakes such an analysis. The first fifty-three pages (approximately one-fifth of the book) are devoted to "a thoroughgoing inquiry to determine whether or not Congress intended that the Sherman Act should be applied to labor unions" (p. 5). Many readers will wonder why Professor Berman gives so much space to this question. It is now merely of academic interest, or perhaps of historical interest at most. Whatever the intentions of Congress, several federal courts, including the Supreme Court, have held the act applicable to labor; so that's that! Professor Berman feels, however, that no study yet undertaken has done the subject justice. Hence he turns to the fascinating task of searching the *Congressional Record* for the truth. One of three conclusions might conceivably be reached regarding the question of what Congress intended concerning labor and the Sherman Act: first, that the act was directed against business combinations exclusively; second, that the act was definitely intended to cover combinations of labor as well as capital; third, that the framers intended to strike at the evils of combinations and trusts broadly, leaving the act's scope to be determined by the courts. Professor Berman's "careful and thoroughgoing" investigation yields the first of these conclusions. He is convinced that "the act was intended to be an act against trusts, and not against trade unions" (p. 53). He takes the second position into account, but rejects it as unsound. The significance of the third point of view he does not appreciate; at any rate, it is allowed to pass without discussion.

Speculation as to intentions or motives, whether those of an individual or of a legislative body, is always attended by risk. Few who studied the Sherman Act, prior to Professor Berman, possessed the

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confidence to say just what Congress intended with respect to labor. About the only conclusion that can be stated with certainty is this: The purpose of the judiciary committee, which rewrote the original bill, was "to use language broad enough to remedy all evils growing out of combinations in restraint of trade . . . But to go further and say that Congress definitely intended that the activities of labor unions should be included within its scope (or that it should be confined exclusively to business combinations) would perhaps be venturesome." This is the conclusion stated on page 129 of the reviewer's *Organized Labor and Law*. It is based upon a study of the *Record*, and especially upon a statement of Senator Edmunds which is quoted (p. 128) in that work. Curiously enough, Professor Berman's examination of the *Record* does not reveal these exceedingly pertinent words of Senator Edmunds: "We all felt . . . and the committee, I think unanimously, . . . thought that if we were really in earnest in wishing to strike at these evils broadly, in the first instance, as a new line of legislation, we would frame a bill that should be clearly within our constitutional power, that we should make its definition out of terms that were well known to the law already, and would leave it to the courts in the first instance to say how far they could carry it or its definition as applicable to each particular case as it might arise." One could scarcely desire a better illustration of legislative intent "to pass the buck" to the courts.

Professor Berman's omission of this quotation is unfortunate. Had he taken it into account, it might have called for modification of his own conclusions. And in view of the great weight which Professor Berman himself attaches to the words of Senator Edmunds, his failure to reveal the most direct and relevant statement which the senator made regarding the intention of the judiciary committee, which couched the act in the language in which it now appears, is indeed puzzling. "Of all the members of the Fifty-first Congress," he tells us, "which enacted the Sherman Law, the one who was most responsible for its wording was Senator George F. Edmunds. The senator's opinion as to the intent of Congress is therefore important" (p. 6). Largely on the basis of Senator Edmund's statement, the reviewer reaches the rather obvious conclusion that the changes made by the committee in the phraseology of the bill "would seem to indicate an intention on the part of the judiciary committee to deal with the evils growing out of combinations more broadly than was originally contemplated" (*Organized Labor and Law*, p. 128). Professor Berman is

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apparently unaware of the fact that vagueness itself has not infrequently been intentional. What Justice Hughes said of statutes generally is particularly applicable to the Sherman Act: "It is not to be forgotten that important legislation sometimes shows the effect of compromises which have been induced by exigencies in its progress, and phrases with a convenient vagueness are referred to the courts for appropriate delimitation, each group interested in the measure claiming that the language adopted embodies its views."[3]

Ordinarily, I should not feel called upon to state my own opinions at such length. The reason for doing so here is that my position is at odds with that of the author, and also my point of view is misinterpreted by him. Indeed, in his presentation of my conclusions, the author takes liberties that are unusual among scholars. According to Professor Berman, my view is that "the intention [of Congress] to include labor appears very clear" (p. 43); that "if the final bill had been limited to a prohibition of restraints on competition it would have clearly indicated the intention of the Senate to confine the operations of the measure to business combinations" (p. 42). On page 43, Professor Berman supplies a quotation which purports to state my point of view at greater length. This quotation, however, is taken, not from the chapter in which I consider legislative intent, but from a chapter dealing with the *common law construction* of the language of the act. It is significant, too, that despite its relevancy, Professor Berman does not embody in this quotation the sentence immediately preceding it. The omission is both significant and unfortunate, since by including it he would have revealed my lack of certainty regarding the question of legislative intent.

After having interpreted my point of view much to his own liking, Professor Berman proceeds to attack it vigorously—almost viciously. And the result does appear rather disastrous. But then the reader meets words that evince a more judicial temperament: "If he [meaning the reviewer] limited himself exclusively to a demonstration that the Anti-Trust Act contained phraseology which the courts, paying no attention to the purpose of Congress, might interpret to embrace labor unions, there would be little quarrel with him" (p. 43). This, curiously enough, is the nearest approach which the author makes to a statement of the reviewer's position.

[3] 1 *Mass. Law Quar.* (No. 2), 12, at p. 15. See also Ilbert, *Mechanics of Law-Making*, pp. 20-23.

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On page 52, the reader is told that "there is no evidence that the Anti-Trust Act was intended to apply the common law of labor activities to transactions in interstate commerce." Most writers, as well as the courts, have found *some* evidence pointing to a different conclusion; but few have felt absolutely sure as to what Congress intended. Senator Sherman considered the act largely as an application of "old and well recognized principles of the common law to the complicated jurisdiction of our state and federal government."[4] Senator Hoar uses language that leads to somewhat the same conclusion.[5] The truth is that there is not enough evidence to warrant the contention that Congress either intended to include or to exclude labor from the operation of the act. The judiciary committee clearly indicated its purpose to use general phraseology in framing the statute, and to leave it to the courts to say how far they would carry its provisions. Nor is the reviewer aware, as Professor Berman insists, that the courts decided that "Congress intended that the Anti-Trust Law should reach labor unions" (p. 53). Rather, the courts held that the language used in the statute was broad enough to embrace combinations of labor as well as capital.

Pages 57-227 are devoted to a discussion of cases. Herein is embodied much valuable material. Of the three appendices, C is especially worth while in that it provides a "brief description of every case arising under the Sherman Act in which labor was a defendant, concerning which any information could be secured" (p. 57 n). But readers who expect to find in this book a page by page social-economic analysis will more than likely be disappointed. Such an analysis is confined, for the most part, to Chapters XII and XIII, which are interesting and suggestive.

On the whole, Professor Berman has done service to students of this subject in rendering more accessible much valuable and heretofore scattered material.

ALPHEUS T. MASON.

Princeton University.

Lincoln and His Cabinet. By CLARENCE E. MACARTNEY. (New York: Charles Scribner's Sons. 1931. Pp. xviii, 366.)

A study of the president's cabinet in the United States is a difficult undertaking because of the informality of its organization and pro-

[4] *Congressional Record*, 51st Cong., 1st Sess., Vol. XXI, p. 5456.
[5] *Autobiography*, Vol. II, pp. 264 ff.

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cedure, the absence of official records of its deliberations and conclusions, and the varying extent to which our chief executives have sought the advice and assistance of their departmental secretaries in the formulation of governmental policies. Such a study is made possible only by a thorough scrutiny of diaries, collections of letters and papers, and autobiographies of presidents, cabinet members, and their intimate friends and associates, of congressional debates and contemporary newspapers, and of biographical works based upon these original sources. This painstaking task with respect to the administration of our Civil War president has been performed admirably by the writer of *Lincoln and His Cabinet*.

The book is essentially a biographical study, and was prepared with the primary intent of piercing the veil of myth and legend in order to portray the real Lincoln—"a man of greatness and also of limitations"—by giving a view of him in relation to, and in association with, the men whom he chose as his cabinet associates. However, the student of political institutions who seeks to discover the multiple factors which enter into the choice of a president's advisers, the effect of personal ambitions and animosities upon affairs of state, the extent to which a chief executive is influenced in his decisions by the conflicting points of view of his subordinates, and the circumstances which frequently culminate in changes in cabinet personnel, will find much of interest and permanent value in its pages.

In a brief foreword, the writer summarizes the salient facts pertaining to Lincoln's choice of his cabinet members and the nature of his cabinet meetings. An introductory chapter describes in a lucid manner the apologetic, vacillating, and irresolute policy of the Buchanan administration which permitted the ship of state to drift toward civil war, and the tendency of the president-elect and his chief adviser, Mr. Seward, to minimize the possibility of war, to suggest further compromises, and to appeal to the "mystic chords of memory" to preserve the Union. Then follow historical records of all members of the cabinet, for which the writer has drawn extensively and critically from the wealth of material available, to reveal their early life, education, occupation, party affiliations, public service, political ambitions, the circumstances which led to their selection as members of the president's council, the major accomplishments of their departments, their attitude on important government policies, personal estimates of Lincoln, their internal strife, and the influences which led to the termination of their official connections with the administration. Except

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for Stanton, the author includes only those members of the cabinet who were selected by Lincoln at the beginning of his administration, presumably because of the lesser influence of his subsequent appointees. Even Usher, who served as secretary of the interior from 1863 to 1865, and to whom we are indebted for one of the first intimate accounts of the Lincoln cabinet, is omitted.

The value of this book is not confined to the important contribution which it makes to our knowledge of the personalities and policies of Lincoln's administration. The writer also, by his pioneering, has suggested the possibility of similar studies with respect to other administrations, though the available material may not always be as extensive or as fruitful.

LLOYD M. SHORT.

University of Missouri.

The South as a Conscious Minority, 1789-1861; a Study in Political Thought. By JESSE T. CARPENTER. (New York: The New York University Press. 1930. Pp. x, 315.)

Although the author of this book is mistaken in thinking that "no one has yet conceived of the Old South as a sectional minority consciously striving for seventy-odd years to evolve an adequate philosophy of protection to its interests in the American Union," he has been the first to trace the development of this philosophy and to analyze its successive stages. He concludes that there were "four major sources of minority protection which succeeded each other in general chronological order:" (1) the principle of local self-government, relied upon from 1789 to about 1820; (2) the principle of the "concurrent voice," from the twenties to 1850; (3) constitutional guarantees, from 1850 to the election of Lincoln; and (4) the last resort, independence.

The first of these defenses was rendered untenable by the encroachment of the federal government upon the reserved powers of the states through the doctrine of implied powers. The second, which was the idea of giving to the minority a check upon the majority, by either state or sectional veto—a sort of extension of the check and balance system—came to an end in 1850 with the loss of southern equality in the Senate, the last department of government in which the South had potential equality. Driven from this cover, the last refuge of the South within the Union was respect for constitutional guarantees, reinforced by

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the cohesion of national parties. After the break-up of parties and the triumph of a northern sectional party which had repudiated these guarantees for "higher law" doctrines—for so the South interpreted the declarations of Republican leaders—the only recourse was independence. The final chapter considers the application of all these theories in the Confederate constitution.

Professor Carpenter has drawn his evidence from a wide range of printed materials: contemporary books, pamphlets, legislative records, journals of conventions, congressional debates, and historical collections. He has used but few newspapers, and those sparingly, and no manuscript collections. In most cases, he has let his witnesses speak for themselves. In general, he seems sympathetic toward the southern position. He shows that the South bore an unequal share of the burdens of government and received a much smaller share of federal expenditures; he thinks there was a sound historical basis, originally, for the theory of state sovereignty; and he is convinced that the South was actually, and almost continuously, on the defensive throughout the ante-bellum period. He exhibits less sympathy for certain southern positions, notably the fight in Virginia against the doctrine of implied powers.

In only a few instances does the reviewer find cause for disagreement. One concerns Calhoun's purposes in nullification. It will be recalled that Calhoun expected that, when a state had interposed its veto against, or nullified, an act of Congress of doubtful constitutionality, the act could become constitutional only after being so declared by three-fourths of the states—in short, by amendment of the Constitution. Professor Carpenter says (pp. 138-139): "In theory, Calhoun thought it equally logical to conclude that whatever power required the support of three-fourths of the states for its exercise in the first instance should likewise require the maintenance of that three-fourths majority for its continued exercise;" but he cites no statement from Calhoun to support this interpretation. On the contrary, Calhoun explicitly said: "The *right* of a state is not to *resume* delegated powers, but to *prevent* the reserved from being assumed by the government" (Calhoun, *Works*, VI, p. 177). Again, our author asserts (p. 140) that Calhoun was seeking to initiate amendments by a single state, an unsound procedure which was not provided for by the Constitution. But obviously he was not seeking an amendment; he was endeavoring to prevent amendments from being read into the Constitution by im-

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plication. It was the veto power of the state, not the amending power, which he proposed to use. The majority party in Congress or among the states must be the one to seek an amendment (Calhoun, *Works*, VI, 50-51).

The economic and social conditions which so largely determined southern attitudes are touched very lightly. One error in a work marked by so much care is surprising. It is the inclusion of a portion of a speech (pp. 180-181) attributed to A. H. Stephens. This "speech" is a forgery. It was perpetrated for circulation in the presidential campaign of 1864, and was reprinted in several post-war histories; but it was exposed by Henry Cleveland in his *Alexander H. Stephens in Public and Private* (pp. 163-168), and was repudiated by Stephens himself in his *War Between the States* (I, p. 23), and in his *Reviewers Reviewed* (pp. 180-187).

Despite these slips, this is an excellent and important book. The part played by the South in national politics before 1861 cannot be understood without an appreciation of the fact that the section was in the minority on a number of issues which it considered vital, and that it became increasingly desperate as its constitutional defenses crumbled. All students of ante-bellum American history and politics are indebted to the author for the first systematic survey of the development of this peculiar minority political philosophy. The footnotes and bibliography are very helpful, and the index is satisfactory.

CHARLES W. RAMSDELL.

University of Texas.

The American Leviathan: the Republic in the Machine Age. By CHARLES A. BEARD AND WILLIAM BEARD. (New York: Macmillan Company. 1930. Pp. 824.)

On a recent occasion, Dr. Beard likened Democracy, not to the traditional ship of state, but to an old mud-scow, half water-logged, uncertain in its direction as it courses its way over the high seas of political action and controversy. The passengers, Dr. Beard stated, frequently get their feet wet and the scow only too often becomes marooned on hidden shoals; but at least it keeps afloat and the passengers enjoy the ride.

In the preface of this searching analysis of the American political system, however, the authors are wont to think of the Republic not so much as a scow but as a *Leviathan*—"a half-mythical giant uniting in

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one person a whole multitude." Although this treatise is designed to provide the student and general reader alike with a survey of the nature and character of the national government of the United States, in reality we have an assessment of the impact of popular government and technology. The results are most amazing. The attempt in this country to maintain genuine popular control over such diverse activities as the "lame-duck" Congress, the bureau of plant industry, senatorial courtesy, insecticide control, the "rule of reason" in Supreme Court decisions, the biophysical laboratory, and patronage, shows quite conclusively that democratic government in a machine age is about as mythical and tenuous as the state of nature, due process of law, and states' rights. Furthermore, if those desirable objectives set forth in the preamble of the Constitution—justice, domestic tranquillity, and the general welfare—are to be more effectively attained by the establishment of a radio commission or a federal farm board than by a strict observance of constitutional niceties—well, what is the Constitution among friends?

Following an engaging discussion of the fundamental elements of the federal system, in which the authors make short shrift of the formalities and penetrate to the heart of such topics as the theory and practice of judicial review, the president as "a bearer of social heritage," and the real function of conference committees, are chapters which describe the administrative departments "in action." These chapters, it may be fairly stated, constitute the distinctive contribution of the book. Heretofore, treatises on the national administration have been content with a mere recital of the organization and functions of the administrative agencies. In the discussion before us, the attempt is made, and with highly gratifying results, to catch something of the social import of the tremendous advances made by the national government in recent decades in dealing with technological processes. The bureau of mines is described not merely as another administrative agency engaged in the study of mining methods and statistics. Rather, in the bureau's efforts to prevent mining hazards, we have an example of "humanity and rationality" marching "together against ancient foes of mankind." Flood relief is something more than administrative procedure; it may be likened to "the good Samaritan" rendering "aid after high waters have subsided, granting aid and financial assistance to devastated districts." The engineering services of the national government represent technical achievement, it is true; but they are "the spirit of law as distinguished from chance" as well.

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Inevitably, in a work of such wide scope errors of commission and of omission appear. The Myers decision was handed down in 1926, and not in 1929 (p. 70). It is hardly correct to state (p. 322) that the Classification Act, as amended in 1930, provided that the classification board should be composed of a representative of the Civil Service Commission, the chief of the efficiency bureau, and the director of the budget, since the composition of the board had already been fixed by the act of 1923. The really significant change effected by the act of 1930 was provision for selection by the board of a director charged with the duty of carrying out the requirements of the Classification Act of 1923. The discussion of national administrative reorganization is incomplete (p. 309), because of the failure to include the provisions of the reorganization bill of 1924-25. To such readers as are familiar with the Beard tradition for political realism, it seems somewhat strange to have the vote described as a "right" (p. 78) rather than a privilege.

As a text-book for class-room use, the *Leviathan* cannot be too strongly commended. Its typographical appearance is pleasing. The index is adequate. Of special interest to the teacher of American government is the listing at the end of the book (pp. 793-798) of a number of motion picture films which may be used in giving students a more intimate conception of governmental operations.

GEDDES W. RUTHERFORD.

Iowa State College.

Daniel Webster. By CLAUDE M. FUESS. (Boston: Little Brown and Company. Two volumes. 1930. Pp. x, 398, 465.)

Professor Fuess has added another to the steadily filling shelf of masterly American histories and biographies. We will make room for this one right next to Beveridge's *Marshall,* to which it bears many resemblances, and of which it is in a very real sense a sequel. A few more such books, and we shall be able to walk across the stream of American history on biographical stepping-stones. For this book would have been entitled, in another generation, "The Life and Times of Daniel Webster."

It was not to be expected that Professor Fuess could unearth any great amount of new Websteriana; the nature of the case forbids. But if he did not succeed in his ambition "to read everything in existence

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by or about Webster,'' he has probably come closer to it than any one else either has or will—close enough to produce what is certain to be, for an unpredictable length of time, the definitive ''Life.'' One reason why the book is so satisfactory is that the author has not only researched (if this is not a good verb, it should be) deeply, but meditated long and to good purpose on his material.

It is scarcely necessary to say that the work is not a eulogy. Webster's shortcomings, and they were many, are frankly revealed. If a senator today should indulge in the financial looseness which Webster was at little pains to conceal, he could not keep his seat. This weakness in money matters was Webster's besetting and most unpardonable sin. The author has carefully investigated the many other discreditable stories about Webster, and finds them without foundation, notably the ones alleging sexual immorality. With especial convincingness are the tales of Webster's ''indolence'' refuted.

The great scenes in Webster's life, too well known to need recapitulation here, are painted with a master hand. Prolixity has been avoided. At that, this reviewer's favorite chapter is the altogether delightful one entitled ''Webster at Portsmouth.''

The author has evidently devoted the most painstaking attention to the great controversy over the ''Seventh of March'' speech. On this, his findings are unqualifiedly pro-Webster. Webster was not, on that day, a coward, an apostate, or a traitor, but courageous, and more than all, *right*. Here the author gives full credit to Professor Herbert D. Foster, whose remarkable piece of original research work on this matter has not yet received its due meed of appreciation.

Through all, we never lose sight of Webster's personality. No American has been better able ''to rise to the heights of the great occasion;'' and surely no American has ever approached Webster in the power of his mere personal presence. It is significant that in the very last chapter, the author has to describe this power by the adjective ''inexplicable.''

If it were necessary to characterize the whole work by two words, those which might well be chosen are ''adequacy'' and ''balance.'' To quote Professor Phelps of Yale, the book is as entertaining as it is instructive; it makes one proud of American scholarship.

JAMES P. RICHARDSON.

Dartmouth College.

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The International Protection of Industrial Property. By STEPHEN P. LADAS. (Cambridge: Harvard University Press. 1930. Pp. xiii, 972.)

With this volume, the author presents to the English-speaking world a pioneer work of prime importance. American writers have neglected this important field, perhaps because practically all previous works on the subject, written in about ten foreign languages, come from Europeans thinking in terms of the civil law. A European background, an intimate knowledge of the civil law and of Anglo-American law, and a remarkable linguistic ability have enabled the author to write this first comprehensive and systematic survey of its kind in the English language.

The work is divided into three parts, which are devoted, respectively, to a consideration of the bipartite treaties prior to 1883; to the international régime since 1883, and its growth; and lastly, to future developments. The author explains the nature of the various species of industrial property (patents, trademarks, etc.) and discusses the international regulations in their two-fold operation of protecting these rights by their own force and by encouraging uniformity of municipal legislation. This felicitous treatment makes the volume stimulating reading for those interested in comparative jurisprudence, who have heretofore shied away from this field as being forbiddingly involved. For lawyers who specialize in patent and trademark law, the work is of inestimable value. The author offers many criticisms, and submits arresting novel views; and this reviewer questions the soundness of but few of them. A wealth of statistical tables, a comprehensive bibliography, and an excellent index contribute greatly to the usefulness of the volume; though the practice of citing treaty provisions in French may handicap some readers. All in all, the author deserves high praise for his almost affectionate treatment of his subject; without such love for his theme, he could not have produced a work which fills —as this one does—a long-felt need, and which will lead to a clearer understanding of a very important branch of international law.

KARL POHL.

New York City.

International Understanding. By JOHN EUGENE HARLEY. (Stanford University: Stanford University Press. 1931. Pp. xiv, 604.)

Professor Harley has provided a most comprehensive catalogue of agencies for the promotion of international understanding, among

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which treatment is accorded to international houses, such as those in New York City and Berkeley, California; official international organizations, such as the Pan-American Union, the League of Nations, the World Court; academic institutes with yearly programs, such as the Institut Universitaire de Hautes Études Internationales at Geneva and the Hochschule für Politik at Berlin; summer schools and institutes, embracing the Institute of Politics, the Institute of International Relations, the Geneva School of International Studies, and the Institute of Pacific Relations; special institutes or associations of a permanent nature, including the Foreign Policy Association, the Council on Foreign Relations, the American Society of International Law, the Social Science Research Council, the Institute of International Law, the Inter-Parliamentary Union, the Royal Institute of International Affairs, and the Canadian Institute of International Affairs; and major endowments and foundations, chief of which are the Carnegie Endowment for International Peace, the World Peace Foundation, the Institute of International Education, and the John Simon Guggenheim Memorial Foundation. The organization, activities, and contributions of each of these, and many others, are presented in convenient compass.

An extensive series of appendices lists scholarships and fellowships open to foreign students desiring to study in the United States, scholarships and fellowships open to American students desiring to study abroad, colleges in the United States offering courses in international law and related subjects, tabulations of the number of foreign students in the United States in 1921-29 (with distribution among the colleges and universities), and the statute or constitution of the International Educational Cinematographic Institute at Rome. An index affords a convenient guide, supplementary to the table of contents and to the list of agencies.

All persons and institutions interested in organized information concerning agencies engaged in promoting international understanding should be in possession of this volume.

W. Leon Godshall.

Union College.

Constitutional History of the First British Empire. By A. Berriedale Keith. (Oxford: Clarendon Press. 1930. Pp. xi, 443.)

The literature on the political and constitutional history of the thirteen colonies is vast in volume, and sound work has been done

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in the field of British Imperial relations in the seventeenth and eighteenth centuries; but Professor Keith is the first scholar to attempt a text on the constitutional history of the Old Empire as a whole. The learned author's main interest, it is well known, is in the government of the self-governing British Dominions, and the present volume is intended to serve as an introduction to the study of the Imperial constitution since the American Revolution. It should prove serviceable also to those who are interested in the colonial origin of American political institutions.

In scope, it embraces the British West Indies, Nova Scotia, Newfoundland, Canada after the British conquest, and Senegambia, as well as the thirteen colonies. An account of the government of East and West Florida as British provinces, a subject of which little is generally known, would have been welcome, though the Floridas, it is true, remained under British rule for less than twenty years. The work is divided into three parts—"The Evolution of the Imperial Constitution," dealing with the development of colonial political institutions and Imperial relations in the seventeenth century; "The Imperial Constitution at its Zenith," from the Revolution of 1688 to the Seven Years' War; and "The Decline of the Imperial Constitution," from the Seven Years' War to the American Revolution. In the first and third parts, the author follows a chronological order. In the second part, the heart of the book, the treatment is by topics, which include the organization and powers of the executive, the legislature, and the judiciary in the colonies, and the instrumentalities and subjects of Imperial control. Nowhere else, in a single volume, can one find so much reliable information on these matters.

Professor Keith examines with some care the arguments advanced by colonial radicals on the eve of the American Revolution to show that Parliament had no lawful authority over the colonies. His conclusion, diametrically opposed to the view taken by Professor McIlwain in his *American Revolution,* is that there was no warrant in law for the colonial contention.

R. L. SCHUYLER.

Columbia University.

Crime and the Criminal Law in the United States. By HARRY BEST. (New York: The Macmillan Co. 1930. Pp. xvii, 615.)

Criminal Procedure in North Carolina. By GEORGE R. SHERRILL. (Chapel Hill: University of North Carolina Press. 1930. Pp. x, 173.)

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Canadian Penal Institutions. By C. W. TOPPING. (Chicago: University of Chicago Press. 1930. Pp. xiv, 125.)

Professor Best set himself an ambitious task. His book is at once a summary of criminal law and procedure written down for the college student, an essay on criminal statistics, a digest (rather well done) of prevailing sociological data on the causes and treatment of crime, and a consideration of "measures for improvement." Considering the tremendous scope of the book, the author has done a creditable piece of work. There is little documentation, and very little attempt to lure the student to speculate on the many imponderables of the subject. The style is pedestrian, little relieved by the vast human interest possibilities of the subject. It is not so didactic, however, as most of the current literature on crime.

Professor Sherrill has made a study of criminal procedure in North Carolina as it is reflected in the decisions of the Supreme Court of that state. It belongs with a number of studies of the same sort, including those by Grimm in Missouri, Vernier in California, and Harno in Illinois. This task in any state is formidable, but Professor Sherrill has done his work carefully and convincingly. The book provides a contribution to the understanding of the actual operation of the rules governing criminal procedure.

Professor Topping contributes a brief description of Canadian prisons, their administration, and problems. From the vast materials at hand, he has made a satisfactory selection. In view of the fact that we may learn much from Canadian experience in this field, such a handbook is of distinct value.

RAYMOND MOLEY.

Columbia University.

BRIEFER NOTICES[6]

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Rise of American Civilization, by Charles A. and Mary R. Beard (Macmillan, pp. 824; 865), which originally appeared in two volumes, has been reprinted in a one-volume edition. This unique and penetrating survey of the development of American life from the agricultural to the industrial era, and finally into the machine age, has been so widely read and discussed during the last three years that it needs little

[6] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring.

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further comment. Through its more than fifteen hundred pages of easy flowing narrative, the student of government may follow without a break or a decline in interest the important political, social, and economic movements which provide the background so necessary for a clear understanding of our governmental institutions and political ideas. In the final chapter, devoted to "The Machine Age," the authors point out that in spite of the emphasis on new inventions, standardizing processes, and mass production, there has been progress in the fields of science, letters, music, art, and education; although these developments have naturally been shaped to further the new order of things. Looking to the future, and answering the critics who think that they see "all American society sucked into the vortex of the machine process endlessly whirling to the tune of numbers," the authors wrote at the end of the third decade of the twentieth century: "If the generality of opinion, as distinguished from that of poignant specialists, was taken into account, there was no doubt about the nature of the future in America. The most common note of assurance was belief in unlimited progress—the continuous fulfillment of the historic idea which had slowly risen through the eighteenth and nineteenth centuries to a position of commanding authority. Concretely it meant an invulnerable faith in democracy, in the ability of the undistinguished masses, as contrasted with heroes and classes, to meet by reasonably competent methods the issues raised in the flow of time—a faith in the efficacy of that new and mysterious instrument of the modern mind, 'the invention of invention' moving from one technological triumph to another, overcoming the exhaustion of crude natural resources and energies, effecting an ever wider distribution of the blessings of civilization—health, security, material goods, knowledge, leisure, and æsthetic appreciation, and through the cumulative forces of intellectual and artistic reactions, conjuring from the vasty deeps of the nameless and unknown creative imagination of the noblest order, subduing physical things to the empire of the spirit."

Two pleasant volumes dealing with American institutions and their culture development are: *Puritan's Progress,* by Arthur Train (Scribner's Sons, pp. x, 475), and *American Society,* by Charles F. Thwing (The Macmillan Company, pp. ix, 271). Mr. Train's book, in part history and in part sociology, is a delightful rambling discourse on our civilization, past and present, but with particular reference to the

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influence of New England. Mr. Thwing's volume is a collection of essays published in the *Hibbert Journal* between 1911 and 1930. The author discusses with "a high hope and a belief broad," topics such as the family, education, and public opinion. In marked contrast with these gentle books stand: *The Third Degree; Detailed Account of Police Brutality,* by Emanuel H. Lavine (Vanguard Press, pp. viii, 248), and *Dynamite; the Story of Class Violence,* by Louis Adamic (The Viking Press, pp. x, 452). The former volume is written by a New York newspaper reporter, and purports to be based upon knowledge gleaned at first hand. Mr. Adamic's study traces historically the episodes of rioting and murder that have occurred in the class struggle in the United States. Criminal terrorism today has replaced the sporadic unorganized protest of an earlier day. The underdog is fighting back through sabotage and racketeering. Despite the subject-matter of these two works, the authors have not descended to lurid sensationalism in their graphic exposes. They are concerned, but not excited. Taken together, the four studies, in their examination of our social and political institutions, cast strangely conflicting lights upon the contemporary scene, sweeping from the heights of idealism to the very depths of depravity.—E.P.H.

In *The Early History of the Republican Party* (The Gorham Press, pp. 313), Professor Andrew Wallace Crandall brings together in a well-balanced continuity the circumstances and the forces that led to the formation of the Republican party. The author weighs his evidence and preserves a judicious tone throughout, although he does not fail to bring into the picture the human elements, whether of personality or ambition or devotion, that affected the course of events. The material garnered from newspapers and campaign documents enlivens the work and clarifies the discussion. Beginning with the crisis precipitated by the Kansas-Nebraska Act in 1854, the rapid trend of the anti-slavery movement is traced in its connection with the well-nigh spontaneous rise of the Republican party. The account concludes with the story of the party's first presidential campaign in 1856. Here is the genesis of a party set off against the background of the period. Mr. Crandall's book is not only detailed, informative, and useful, but it is likewise, in the opinion of this reviewer at least, the most interesting and discriminating single volume explaining the formation of the G.O.P.—E.P.H.

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Wilson, the Unknown, by Wells Wells (a pseudonym), and published by Scribner's Sons (pp. viii, 358), is an attempt to describe and explain Woodrow Wilson in terms of what the unknown author's imagination reads into the former president's life. The fantastic thesis is advanced that Wilson was a super-strategist plotting far in advance all the steps of his career. He was planning to become the dictator of American democracy, and thus bring his party into power for an indefinite period. Coolly, Wilson gazed into the future and laid out a course that would bring the United States to a position of world dominance. His physical breakdown spoiled the great design. Truly a bizarre book!

STATE AND LOCAL GOVERNMENT

A Study of the Legislature of the State of Maryland, with Special Reference to the Sessions of 1927 and 1929 (pp. vi, 110), by Harry J. Green, is one of the recent monographs in the Johns Hopkins University Studies in Historical and Political Science. The author discusses the organization of the legislature, procedure, introduction of bills and committee action, and extra-legislative forces. Although the workings of the bicameral principle are not studied in detail, the author is doubtful regarding the efficacy of the division into two chambers. Political representation is similar in both houses; responsibility is weakened by the passage of bills in one house with the understanding that they are to be killed in the other; amendments are made to bills in the second house, rather than the house of origin, to avoid fights; and the opinion is expressed that "more serious consideration would be given the vast majority of the bills if there were no other house to review the subject." As regards composition, Dr. Green found that farmers, lawyers, and merchants constituted over half of the members, with almost every other vocation represented in the remaining half. "The present legislators, on the whole, are neither intelligent, nor educated, nor cultured. As a group, they are on a par with a crowd of men which might be collected on the streets. . . . The lawyers are the outstanding figures. . . . From eighty to ninety per cent of the speeches delivered emanate from the lips of the lawyers. . . . Most of the members have had little or no education." Dr. Green finds in Maryland the same last-minute rush which exists in most state legislative bodies, and expresses the view that "undoubtedly the quality of the work of the legislature is diminished more by the traditional habit of delaying action until the last moment than by any

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other single factor.'' The split session plan or constitutional limitations on certain phases of procedure are suggested as remedies, although the author fails to note that West Virginia has recently given up the split session plan. In the chapter on ''Extra-Legislative Forces,'' Dr. Green gives an interesting account of the influence exercised on legislation by the governor, the lobby, and the press. Very clearly, the executive in Maryland has been a strong force so far as legislation is concerned, and his influence has been strengthened by the budget system and recent administrative reforms, as well as by strong party majorities. Next to the governor in importance comes the press; and in fact the author is of the opinion that the press at times rivals even the governor and the political bosses. ''The members of the press are pampered and favored throughout the legislative meeting.... A press warning that a certain subject will receive unfavorable news reports acts as a decided deterrent.'' The author also points out that, as in most other states, a large part of the legislation of Maryland is in the nature of special and local legislation and legislation having to do with administrative details. In spite of its shortcomings, Dr. Green is of the opinion that ''while some defective legislation is passed, and while the omission to act in other instances produces deleterious results, the General Assembly is in the main successful—in that it makes provision for most of the problems, minor and vital, which arise in the affairs of the state; it enacts sufficient current legislation to meet the needs of the state for the two-year intervals; and as session follows session, it contributes by degrees to the formation of an effective economic structure, adequate to the changing public requirements.'' A bulletin dealing with a somewhat similar subject, but from a more technical viewpoint, is *Legislative Procedure in Kansas* (University of Kansas, pp. ix, 84), prepared by Frederic H. Guild and Clyde F. Snyder, and issued as Number 1 of the Government Research Series of the Bureau of Governmental Research and Service. This booklet is in the form of a manual prepared for the use of both laymen and legislators, outlining in detail how a bill becomes a law in the state of Kansas. There are numerous illustrations, examples, and explanatory footnotes which make the complicated process of law-making more understandable to the student.

The University of Virginia Institute for Research in the Social Sciences has issued an excellent report on *Criminal Justice in Virginia*

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(pp. ix, 195), by Hugh N. Fuller, in association with A. M. Dobie, F. D. G. Ribble, and Raymond Moley. The study is the result of an investigation of about 15,000 criminal cases in some thirty courts located in both rural and urban areas during the years 1917, 1922, 1927, and 1928. The material is presented under the headings of the amount and kind of business; how the courts disposed of their business; sentences; and official opinions. Although the data are largely statistical, and the aim of the investigators has been to present the facts as they found them, leaving the reader to draw his own conclusions as to satisfactory and unsatisfactory conditions, certain conclusions, or "indications," of the staff are submitted. Among the most important of these are: (1) "The number of felony charges filed in the courts of record has increased very largely since 1917, far more rapidly than the increase in population justifies. A part of this increase is due to the larger number of liquor felonies now prosecuted in the courts, but these cases do not account for all of the increase. . . . The prohibition law may be *a* cause, but is not the *sole* cause, for the general dissatisfaction with the American courts." (2) "A relatively small percentage of criminal cases is now determined by the ancient trial by jury . . . the usual case is now decided, not by the court, but by the commonwealth's attorney. . . . If we are to have administrative justice, with the prosecuting officer supplanting the judge as the most important official in the judicial system," certain improvements are necessary, such as changing the method of the prosecuting officer's appointment, giving him a salary commensurate with his large powers, and "possibly relieving him from the cares of private practice." (3) "Extreme dissatisfaction is quite generally expressed regarding the justice of the peace system." (4) Delay does not seem to be a serious problem in the Virginia courts. (5) "In one very important respect the courts of Virginia have maintained their dignity. They have kept themselves free from the evils of sensational news-reporting of criminal cases." (6) The bar itself should become more interested in the causes of crime, especially in the sociological and psychological background, and in modern methods of administering criminal justice. "The bar cannot complain of the lack of respect of the public so long as it is content to carry over the necessary conservatism of the law of contracts and real property into other fields where ultra-conservatism becomes absurdity."

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Motivation and Political Technique in the California Constitutional Convention, 1878-79, by Carl Brent Swisher (Pomona College, pp. 132), differs from most previous studies of state constitutional conventions in that it emphasizes the part which competing interest groups played in the election of delegates and in the convention, the motives which influenced each group, and the political methods which they employed to accomplish their ends or to defeat their opponents. The author carefully analyzes the composition of the convention, and points out that the delegates were divided into three main classes according to occupation: (1) "large capitalists, their representatives at law, and a few great landowners"; (2) "the small farmers, usually with heavily mortgaged property, with grievances against land and water monopolists and great corporations," and also "against the prevailing mode of taxation;" and (3) "the city laborers, who differed from the farmers chiefly in owning little or no property, and for this reason having less of a stake in the existing order." Dr. Swisher's study is concerned chiefly with the "alignments and antagonisms within and among these groups," and with the interplay of conservatism and radicalism. Special attention is given to the struggle in the convention over the articles having to do with the control of railroads and other corporations, the regulation of taxation, and the Chinese problem. The booklet makes interesting reading, and also is suggestive of other studies of a similar nature.

State and Local Taxation of Property (pp. xii, 245), issued by the National Industrial Conference Board, is a most useful analysis of the present status of property taxation in the American states, methods of assessment and collection, and the machinery for central administration and supervision. Almost one hundred and fifty pages are devoted to comparative tables setting forth the diverse practices of the states as to the law and administration of property taxes. Among the most important conclusions reached as a result of studying the prevailing tendencies in the various states are: (1) "the town system of assessment is encountering vigorous opposition in almost every state . . . and it may be expected that . . . more states will adopt the county unit plan;" (2) "if property is to be valued properly, it must be viewed personally by the assessor," . . . and "the determination of values requires the utilization of modern valuation systems based on

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correlations of such value determinants as income, location, improvements, transportation facilities, soil, forests, minerals," and on land value maps, etc.; (3) "the whole tax system should be placed under the supervision and control of a central tax commission;" (4) "in order to enforce proper administration of the tax laws, the tax commission should also have the power to remove any incompetent assessors;" and (5) "the success of a tax law depends primarily on its administration," and "success of the administrative system depends fundamentally on two factors, personnel and support."

The City Manager Year Book, 1931, containing the papers and addresses of the seventeenth annual convention of the International City Managers' Association held at San Francisco in September, 1930 (Chicago, pp. vi, 306), is one of the best annual handbooks that has been issued by the Association. Among the general papers are those by W. B. Munro on "When Is a City Well Governed;" "Advantages or Disadvantages of the Council-Manager Plan," by Edwin A. Cottrell; "The Need for a Strong Mayor," by Stephen B. Story, city manager of Rochester, New York; "Some Experiences with a City Manager," by F. B. Stringham, former mayor of Berkeley; "The Haphazard Growth of American Government," by Chester H. Rowell; "How Universities Aid in Improving Government," by President Sproul, of the University of California; and "Municipal Leagues as Aids to Public Officials," by William J. Locke, secretary of the League of California Municipalities, one of the strongest organizations of this type. The special topics dealt with fall under the headings of municipal finance, reporting to the public, police administration, personnel administration, and facts as aids to management. It is difficult, and perhaps unfair, to distinguish between the various special papers; but among those worthy of special mention are "The Selection and Distribution of Police Personnel," by August Vollmer; "Police Record Keeping and Reporting," by Bruce Smith; "The Coördination of Police with Activities of other Law Enforcing Agencies," by C. I. Howell, chief of police of Coronado, California; "The Organization for Handling Personnel Work," by Fred Telford; and "Recent Observations on the Services of the National Association of Local Government Officers of Great Britain," by Professor Frank M. Stewart, of the University of Texas. There is the usual directory of council-manager cities and city managers.

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Airports; their Location, Administration, and Legal Basis (Harvard University Press, pp. xvi, 190), by Henry V. Hubbard, Miller McClintock, and Frank B. Williams, is an excellent illustration of the effect of new inventions on the problems of municipal administration, and is of special significance as indicating a desire to plan ahead and work out a solution for these problems before they become acute, thus avoiding the complications that have arisen in regard to the location of railway terminals, traffic regulation, etc. This study is based largely upon first-hand investigation of eighty-five typical airports in all parts of the United States, and is divided into three parts: "The Airport in the City Plan," by Mr. Hubbard, assisted by H. V. Menhinick; "Airport Administration," by Mr. McClintock, assisted by Paul Mahoney; and "The Law of Airports," by Mr. Williams. In their respective reports, the authors have set forth invaluable information, which should serve as a useful guide to students on such topics as the physical characteristics of airport sites; functional relation of the airport to the city and the region; the relation of the airport to the national transportation system; ownership of airports; administration; management; fiscal policy; federal and state jurisdiction over aviation; ownership of air space and legal rights therein; regulation of location and legal liability. There are numerous charts, illustrations, maps, and statistical tables. Another recent study in the field of municipal administration is a bulletin on *Municipal Organization for Street Traffic Control,* by Miller McClintock and Sidney J. Williams (Municipal Administration Service, pp. 28). The topics covered include types of traffic-control engineering; organization of traffic engineering agencies; police functions; traffic forces; traffic courts and violations bureaus.

In *Master of Manhattan* (Longmans, Green and Co., pp. vii, 279), Lothrop Stoddard presents an exceedingly readable biography of Richard Croker. Writing for a general audience, the author outlines the sequence of important political triumphs and defeats in the boss's career, bringing in enough of the contemporaneous social and historical circumstances to place Croker in the general context of his time. The treatment is pointed, concise, and objective; the result is a clear picture rather than a profound study. No new material is presented; no unique interpretation is offered. Still, the volume impresses the reader as less discursive, less partisan, and better written

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than the older biography by Alfred Henry Lewis. Mr. Stoddard stands much indebted, however, to this earlier writer.—E.P.H.

In a pamphlet entitled *Standards for Modern Public Utility Franchises* (Municipal Administration Service, pp. 36), John Bauer offers practical advice to municipal authorities faced with the task of granting or renewing public service franchises. Mr. Bauer believes that the local franchise must continue to play an important rôle in regulation, both because of the need of making special provision for peculiar local conditions, and because of "the failure of the state to establish effective regulation." Among the many specific recommendations, emphasis is put on the importance of including in the franchise the "controlling basis of valuation according to which the rates shall be fixed," but leaving to the state commission the task of fixing the rates for the service. The cost of service contract is also suggested and discussed.—C.S.H.

The Detroit Bureau of Governmental Research has published a report entitled *The Government of the City of Atlantic City, New Jersey* (pp. 140), prepared by Lent D. Upson, C. E. Rightor, J. M. Leonard, and H. Place of the Bureau, William H. Allen of the Institute of Public Service, Cornelius Cahalane, police consultant, and K. J. McCarren, city assessor of Detroit. The survey is of special significance in that Atlantic City is one of the municipalities still operating under the commission plan. The authors of the report are critical of the commission plan as it has worked in Atlantic City, and recommend that the city-manager or the strong-mayor type of government be adopted. Each department or function is carefully tested by the application of generally accepted standards of efficient administration, and recommendations for improvement are made.

In *State Supervision of Local Finance in Minnesota* (University of Minnesota Library, pp. 34), Mr. Edwin O. Stene comes off with the opinion that while state administrative supervision is at present somewhat excessively decentralized, it would probably be "impractical or difficult" to bring about any considerable change in the situation. There is discussion of state control in relation to local taxation, municipal budgeting, municipal accounting, and municipal indebtedness, and at the end a chapter devoted to summaries and conclusions.

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Publication number 31 of the League of Minnesota municipalities is entitled *State Income Taxation* (University of Minnesota Library, pp. 34). The report was prepared by Professor Roy G. Blakey and presents a useful survey of state taxation of incomes, on the basis of the experience of the twenty or more states now employing the device. The success of the tax is found to be largely proportioned to the degree of centralized administration provided for.

Centralized Purchasing: a Sentry at the Tax Exit Gate, by Russell Forbes (National Association of Purchasing Agents, pp. 40), is a concise and clear summary of the essential features and advantages of an effective plan of governmental purchasing by the leading authority in that field. The value of the booklet is increased by numerous concrete examples from various cities.

FOREIGN AND COMPARATIVE GOVERNMENT

Studies and Notes Supplementary to Stubbs' Constitutional History, Volume III, by Charles Petit-Dutaillis and George Lefebre, and translated by M. I. E. Robertson and R. F. Treharne (Manchester University Press, pp. ix, 304-517), is a notable contribution to the history of the medieval English constitution. It summarizes in masterly fashion the modifications and additions made by historical research in the generation and more since the appearance of the third volume of Stubbs' history. Nothing could demonstrate more conclusively the massive and permanent character of Stubbs' great work; yet nothing which has appeared since his time has shown so clearly as this brilliant and comprehensive summary how far the pendulum has swung away from his central conception of the nature of English constitutional development. We have here in small compass an account and a judicious estimate of all the newer views, and of such important additions as the monumental "Chapters" of the late Professor Tout on the administrative system which Stubbs so nearly ignored after the twelfth century, and of the work of Messrs. Jenkinson, Richardson, Sayles, Edwards, and others, in which the beginnings have been made—all more or less under the influence of Maitland's epoch-making *Memoranda de Parliamento*—of the monographic work necessary before a history of the House of Commons can be written. The authors are clearly in sympathy with the newer

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view that Edward I was more zealous for his prerogative than for any "constitutional" principle; and Simon de Montfort, far from being "the founder of the House of Commons," as Pauli called him, was, in the opinion of M. Petit Dutaillis, thinking of nothing beyond the substitution "for the rôle of the king and his favorites of an aristocratic government;" yet M. Lefebre prefers Stubbs' view of the fundamental importance of the county court to some of the later views in which it holds a less important place. Here, as elsewhere, the discrimination of the authors is admirable. This volume completes the English translation of the essays appended to the French edition of Stubbs' *History*. It is indispensable to all students of English constitutional development in the Middle Ages.—C.H.Mc.

A Constitutional History of England to 1216 (Macmillan, pp. 430), by W. A. Morris, who will be remembered for his scholarly studies on the *Medieval English Sheriff* and the *Frankpledge,* is a well-organized general account of the development of political institutions during the period indicated. The book embodies the many and interesting results of the very active "newer scholarship" which has supplemented, and often modified, the conclusions of the great pathfinder, Bishop Stubbs. Although Morris is generally scholarly and sound when he offers or accepts the most-considered interpretations of such luminaries as Maitland, Round, Vinogradoff, Adams, and McKechnie, he breaks no new ground himself. No new light, for example, can be found on such vexed and obscure subjects as the county and manorial courts, the nature of important parts of the judicial and financial administration, or the relation of royal ordinances to the ordinary customary law. The general historical and bibliographical summaries introduced at the beginning and end of the chapters, respectively, should prove useful. As for the style, it at least possesses the merit of clarity, even though it has no other claim to distinction. The student looking for an up-to-date text or reference book, rather than the scholar looking for new discoveries or interpretations, will be primarily interested in this book.—M.A.S.

For the historical background so necessary to an understanding of modern European government, politics, and international relations, no better source may be found than the revised second volume of James Harvey Robinson and Charles A. Beard, *The Development*

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of Modern Europe; the Merging of European into World History (Ginn and Company, pp. xi, 661, xxvi). After an introductory chapter on "The Heritage of the Twentieth Century," summarizing the "economic and political movements and ideas which determined the broad lines of development in Europe as the nineteenth century wore into the twentieth," the authors develop their narrative in five main divisions, as follows: (1) "the general trend of affairs within the several European countries before the war," (2) "the further merging of European history into world history through imperialism down to the world war," (3) "the antecedents of the war and the war itself," (4) "the aftermath of the war, the reconstruction of the various nations, and the attempts to avoid future conflicts," (5) "the astonishing revolution in man's conception of himself and his world revealed by scientific research . . . and the reflection in literature of novel conditions, knowledge, and awakened criticism of human conduct and institutions." Emphasis is placed on the effects of experimental science and mass production on European civilization.

Die staats-und völkerrechtliche Stellung Britisch-Indiens, by Wolfgang Kraus (Universitätsverlag von Robert Noske, Leipzig, pp. viii, 226), is an attempt to bring some juristic order into the complex problem of India's position both in constitutional and in international law. It is the type of juristic analysis which the Englishman himself rarely undertakes, and is well worthy of study at a time when the question of India's future status is again in the forefront of public discussion. The book deals particularly with the areas under direct British rule, but considerable attention is paid to the thorny problem of the native states, primarily to demonstrate the unity of India for purposes of international law. A peculiarly useful aspect of Dr. Kraus's study is his analysis of the difference and occasional conflict between the legal constitutional position of India and its conventional position in the British Empire. Considering the nature of the subject-matter, it is inevitable, as Dr. Kraus himself is wholly ready to concede, that no juristically perfect "construction" of the status of India is possible, at least during the present period of transition. But this study is a very real contribution to the literature of the subject.—R.E.

On the Threshold of Fascism, by Peter M. Riccio (Casa Italiana, Columbia University, pp. 261), is an attractively written, if un-

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critical, examination of some of the immediate intellectual precursors of the Fascist movement. Guiseppe Prezzolini, and the review *Voce* which he founded and edited with the aid of Papini and others of his friends, occupy the center of the stage. To Prezzolini, according to the author, must go a large share of the credit for preparing the nation for Fascism by rousing it from its lethargy, preaching the gospel of action, and smashing all the outmoded idols of the intellectuals. It is difficult to secure any clear picture of the precise aims of Prezzolini and his associates beyond a general iconoclasm and nationalistic pragmatism, but the comparison to Mencken that the author makes at one point gives something of a clue. To Mussolini was left the constructive work of the future; the *Voce* was aware of the rottenness of the present, and had no hesitancy in exposing it. Some fifty pages of the book are occupied by an alphabetical list of the contributors to the *Voce*, with a brief biographical note for each and a list of the articles contributed.—R.E.

The annual *Political Handbook of the World* issued by the Council on Foreign Relations (Yale University Press, pp. 200), and edited by Walter H. Mallory, is an up-to-date revision of the *Handbook* of 1930. To bring out this edition at an early date in the year makes the volume more serviceable, but is more difficult. This has been particularly true for the year 1930, as changes in governments were frequent in the latter half of that year, especially in South America. The late changes in other states are also indicated, as in Turkish parties. The *Handbook* gives party programs and leaders and the political affiliations of the various newspapers. The policy of annual revision and issue seems to be fully warranted.

On the Rim of the Wilderness, by Maurice Samuel (Horace Liveright, pp. 247), proclaims as its purpose an impartial presentation of the conflict in Palestine stripped down to its bare and indisputable essentials. The heart of the problem, as he sees it, is the clash between the lethargy and stagnation of the East and the new creative spirit of the West. It is, of course, the Zionist who is reclaiming Palestine from the wilderness and the Arab leaders who represent the powers of darkness. The new Jewish nationalism, borne for the first time by the working class, is, Mr. Samuel contends, the only hope of salvation for the downtrodden fellah, who may look in vain to his Arab

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leaders for any assistance or understanding. This thesis is entertainingly sustained, but the reader may legitimately doubt whether white is as wholly white or black as wholly black as Mr. Samuel would have them.

A life of William Pitt published by the Bobbs-Merrill Co. and written by E. Keble Chatterton bears the title *England's Greatest Statesman* (pp. x, 384). Accordingly, the reader is not surprised to find Pitt delineated in a very sympathetic fashion; he appears as a romantic hero-statesman who gladly laid his talents and his life upon the altar of his country. The author has consulted original sources and has handled his materials skillfully. The book not only holds one's attention but likewise fires the imagination with its picture of a great and unselfish leader.

In his biography, *Mr. Lloyd George* (E. P. Dutton and Co., pp. xv, 313), Sir Charles Mallet presents a critical study of a fascinating, though not wholly admirable, personality. After tracing the career of his subject with seeming understanding and fairness, the author makes his appraisal without equivocation. He says: "I claim with other Liberals the right to say frankly why we can no longer tolerate Mr. Lloyd George as a leader or trust him as a public man." The case is presented frankly, firmly, yet without apparent personal animus.—E.P.H.

INTERNATIONAL LAW AND RELATIONS

Opportunity for Americans to see their foreign policy as others see it is afforded by nine lectures on the Harris Foundation delivered in June, 1930, which have been edited by Professor Quincy Wright and published by the University of Chicago Press under the title of *Interpretations of American Foreign Policy* (pp. ix, 261). An American, a Canadian, an Englishman, a Peruvian, and a Japanese contribute to this interesting symposium. Professor G. H. Blakeslee emphasizes the regional character of American foreign policy, and suggests that the United States should implement the Kellogg Pact by some agreement which would make possible a greater measure of international coöperation whenever there should be danger of war; and that it should give up its normal right to trade with a state which had started an aggressive war. Dean Percy Elwood Corbett expounds Canada's concern in the foreign policy of her southern neighbor, and expresses a wish that "more of that special understanding and consideration

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which mark the individual association of Canadian with American could find its way into our intercourse as states." George Young contributes a British view of the relations of the United States with Europe and with the United Kingdom, arguing that parity in sea power will force Great Britain and the United States to convert their relationship from one of competition on the seas to one of coöperation for world-peace and police. V. A. Belaunde concludes his critical analysis of the recognition policy of the United States, and of the results of the Havana and Washington conferences, by pointing out that arbitration and conciliation are treated more completely and technically in the General Act approved in the Ninth Assembly of the League of Nations than in the Washington treaties. Yusuke Tsurumi surveys American foreign policy from a Japanese viewpoint, in three stimulating lectures. Japan, he asserts, "cannot continue to provide adequate means of support for the middle and labor classes unless the policies of the world change in the direction of more moderation and mutual help and away from unrestrained nationalistic competition." He suggests the coöperation of America, Great Britain, and Japan to promote unity and stable government in China, and to discover how Japan may be guaranteed free access to the raw materials she needs.—J.P.B.

Henry White; Thirty Years of American Diplomacy, by Allan Nevins (Harpers, pp. xii, 518), gives more attention to the thirty years of American diplomacy than to Henry White. At the beginning, the author says of White: "No one ever took him for a great man." Other estimates are given from page to page. "He was not witty, he was not a brilliant talker or writer, he was not a man of deep cultivation, and he had no such resplendent political future before him as Balfour and Curzon. He possessed but comparatively modest wealth. But, as always throughout life, his absolute unselfishness and loyalty, his cheeriness and humor, drew everyone to him." "He held a position of peculiar usefulness in Anglo-American affairs merely as a friend of conspicuous men on both sides of the water, a go-between in all sorts of exchanges, a source of information and an interpreter for both countries." The author also says that White was a man of "tastes for outdoor sports and indoor society"; "never a man who greatly loved reading or study for itself"; "his favorite pastime at this period [London residence] and throughout life was conversation." White's

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career in England brought him in close contact with the best conversationalists there. His appointment as ambassador to Italy in 1904 was pleasing to many, and his service at the Algeciras Conference in 1906 gave him opportunity to display his ability as a conciliator. Among Roosevelt's appointments in 1907, White was transferred as ambassador to France. "White went to Paris, hoping that it would prove a larger sphere, but in his two years there he found opportunities as an onlooker and little more." In 1909, after Mr. Taft became president, Mr. White was informed that his resignation would be accepted, and, regardless of the motives leading to this action, he requested that his successor be appointed as soon as possible. Special missions enabled the country to profit by Mr. White's experience from time to time. The most important of these was as a member of the commission to negotiate peace at the close of the World War, "a selection which surprised the country no less than himself." The chapters relating to the negotiation of the peace show that "the best work of a trained diplomatist is usually that of which the public is unaware." White's opinion in regard to President Wilson's relation to the Peace Conference was that of the well-trained diplomatist: "It would be well for Wilson to open the conference in Paris; it would also be well if he found that he did not have time to stay long." As the author says of White, "He was a man of but one calling;" and President Roosevelt, who had long and close contact with White at a period when American diplomatic service was in transition, regarded him as "the most useful man in the entire diplomatic service."—G.G.W.

The fifty-four states members of the League of Nations, speaking through the tenth session of the Assembly in 1929, instructed the Secretariat to prepare and publish a record of the institution's activities in its first decade. *Ten Years of World Coöperation,* with a foreword by Sir Eric Drummond (World Peace Foundation, pp. xi, 247), fulfills that instruction. In his foreword, the Secretary-General points out that the writers have not attempted to estimate the value of the action related, but ventures that the mere existence of the League "is one of those great facts which inevitably stand out as landmarks in the history of the world," and that in ten years it "has definitely, and greatly, grown in strength—that is to say, in its hold on public opinion throughout the world and on the governments and administrations through which public opinion acts." The fourteen chapters which fol-

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low amply demonstrate those conservative judgments. Each of them deals with a specific phase of activity, with only narrative reference to the Assembly, Council, and Secretariat, which are identified as League organs in a few pages of the introduction. In the same place the system of committees and their development of conference work is barely mentioned; the reader can easily miss the importance of their functions; and if he does, that is the only distortion from photographic accuracy he could conceivably get from this picture of the League. So vast an institution as the League of Nations requires both ingestion and digestion by the public mind before its due influence can be realized. At the outset, there were almost as many opinions of what it was as there were people with opinions. The object of every summary of it ought to be to divulge its essential character, to contribute to agreement upon the fundamental conception it represents. *Ten Years of World Coöperation* brings out emphatically those characteristics which have been identified in prior summaries of the League's work; and the high authority of the Secretariat writers can be regarded as fixing a standard interpretation of the institution they so ably serve. "There is hardly a feature of international life, still less of inter-governmental coöperation, that does not fall within the province of the League." Whatever the problem is, it is briefly but accurately related in these teeming pages. Nearly half the book is required to record the peaceful settlement of disputes, the organization of peace, disarmament and international justice, and the codification of international law. Nine succeeding chapters tell with an attractive intimacy of narrative the multifarious accomplishments in international coöperation in economics, finance, transit, communications, health, social and humanitarian questions, intellectual work, the management of mandates, the protection of minorities, and the administration of certain territories. A chapter on the League's financial administration will go far to satisfy the constant curiosity on that detail. A final chapter on "The League and Public Opinion" contains the best analysis of the influence and reflex of opinion on international relations which has come to the reviewer's notice. It is no exaggeration to state that none can claim to comprehend the League of Nations who has not read this book.—D.P.M.

To present in five or six hundred pages a view of international affairs has been difficult in previous years. In the *Survey of International*

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Affairs, 1929, by Arnold J. Toynbee (Oxford University Press, pp. xii, 545), the attempt is again made. This is more adequate than in some of the earlier years, because of the issue in 1928 and 1929 of a separate volume of documents. The principal topics discussed relate to disarmament and security, European economic affairs, tropical Africa, China and the Pacific, and relations between France and Italy and the Papacy. Some of these have in the course of events become matters of history, as the Palmas Island dispute; while others are still centers of international attention, as changes in Abyssinia. An appendix showing the chronology and three maps showing the location of events are helpful; while the good forty-page double column index is essential. The second volume of *Documents on International Affairs, 1929* (pp. xiii, 349), published by the Oxford University Press for the Royal Institute of International Affairs, is edited, as was the previous volume, by J. W. Wheeler-Bennett. The editor brings together much material not easily available elsewhere which is significant for international affairs, even if it may not be strictly official, such as speeches, notes, etc. Though the volume contains nearly one hundred pages more than the 1928 issue, some topics, due to the course of events, have much less space, such as the evacuation of the Rhineland and reparations; while the U.S.S.R. receives more attention, and the State of the Vatican City appears as a new factor. Extraterritoriality and the attitude of states toward the Permanent Court of International Justice are important topics. In this 1929 volume, as a new feature, is a very valuable appendix giving a chronology of treaties, both between two or more states and general international conventions.—G.G.W.

Under the title of *Maritime Trade in War,* Lord Eustace Percy's lectures on the freedom of the seas delivered at the Williamstown Institute of Politics have been published by the Yale University Press (pp. 114). Englishmen are beginning to realize, he asserts, that "whatever may be the strength of the British navy in any future war, the determining economic factor in such a war may well be, not the control exercised by that navy over neutral commerce, but the control exercised by the United States and the British Empire, respectively, over their own exports." Control by belligerents of their own exports, indeed, "may be more damaging to neutral trade than the most lawless action by contending navies." The author proposes the creation of

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some Anglo-American organization to study and propose a new draft of the law of naval warfare, which should recognize the principle that a state which is willing to submit its claims to judicial determination should have wider rights as a belligerent than the state which refuses such submission.—J.P.B.

Charles Scribner's Sons has now published a one-volume edition of Winston S. Churchill's *The World Crisis* (pp. xii, 866). The whole account, which originally covered, in separate volumes, the events of 1911-14 and 1916-18, respectively, has now been recast so as to present a continuous narrative in a more compendious form. Some corrections and some abridgments have been made, though generally the facts and the conclusions, the author states, remain substantially unchanged.

Although entitled *Diplomatic Relations between the United States and Great Britain,* the sketchy monograph by Dr. Henry G. Hodges (Boston, Richard G. Badger, pp. 148) confines itself to the years 1893 to 1897. Not one of the topics dealt with is treated exhaustively, or with much penetration or literary skill; and the whole is marred by many inaccuracies and wretched proof-reading.

In *Information on the Reparation Settlement* (George Allen and Unwin Ltd., pp. 253), Messrs. John H. Wheeler-Bennett and Hugh Latimer present a succinct analysis of the Young Plan and the Hague agreements of 1929 and 1930, together with enough of the political background for an understanding of them. Texts of the relevant documents are given in full.

POLITICAL THEORY AND MISCELLANEOUS

Adam Ferguson and the Beginnings of Modern Sociology (Columbia University Press, pp. 268), by Professor W. C. Lehmann, is an excellent and scholarly contribution to the recent literature that calls attention to the importance of studies made in the seventeenth, and especially in the eighteenth, century respecting the several embryonic social sciences, and of sociology itself. Adam Ferguson (1723-1816) was one of the brilliant group of Scotch writers who made Scottish universities famous as the seats of philosophic and social studies. His writings had great influence in England and France because of his erudition and his keen insight into the principles underlying social

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phenomena. His influence might have been continuous, had not the Napoleonic wars diverted men's minds into other fields of study. Ferguson, in the field of sociology, rejected the teachings of the natural rights school and stressed the importance of an organic society, powerfully influencing its members through social environment, and having its bases in historical backgrounds and in the psychic nature of man. He taught also a social, progressive movement, implicit in human nature, reaching out toward larger ends, aided in its advancement by conflict or struggle with rival groups and hostile environments. In Part II, Dr. Lehmann discusses Ferguson's teachings in their relation to earlier writers and to the works of his contemporaries, and concludes with a chapter respecting his influence on, or the resemblance of his teaching to, the later writers in the nineteenth century. One can but commend in high terms the author's thorough discussion and discriminating comment on Ferguson's sociological teachings and his place among the founders of sociology. A few slight typographical errors mar this otherwise attractive volume issued by the Columbia University Press.—J.Q.D.

The third volume of Vernon Louis Parrington's *Main Currents in American Thought* was only partially complete at the time of his death in 1929. That portion of the volume, however, together with several scattered essays and some lecture notes, has been published under the title of *The Beginnings of Critical Realism in America* (Harcourt, Brace and Company. Relatively little of the material which the author had completed deals with political thought, but some of the sections that are in finished form do contain remarkably interesting analyses of certain trends and of a few individual thinkers. The discussions of Woolsey, Curtis, and Godkin are particularly good examples of Parrington's method and of his point of view. While the present volume, fragmentary as it is, was thoroughly worth publishing, it is deeply to be regretted that the author did not live to complete the task which he was so brilliantly carrying on.—B.F.W.

Massachusetts was the last of the states to effect a complete separation between the secular and the clerical powers. The second century of the struggle which developed out of the existence of a state church in that commonwealth is treated in considerable detail in Jacob C. Meyer's *Church and State in Massachusetts, 1740-1833* (Western Re-

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serve University Press, pp. ix, 276). After an introductory chapter dealing with some aspects of the controversies over this subject before 1740, Professor Meyer takes up the attitude of the various denominations before the Revolution, the effect of the Revolution and of political reorganization, the relation between Federalism and Congregationalism from 1789 to 1815, the Unitarian schism, and the final stages of controversy in the constitutional convention of 1820-21 and in the successful fight for the constitutional amendment which secured disestablishment in 1833.—B.F.W.

In *The Quest for Social Justice* (The Macmillan Company, pp. xvii, 390), Professor Harold Underwood Faulkner brings together in an interesting discussion the social, political, economic, and cultural elements that constituted the general movement for reform in the early part of this century. Awakening discontent became vehemently vocal, while panaceas abundantly offered were hopefully and enthusiastically grasped. Big business and organized labor, religion and reform, science and health, the rights of women and of children—such are the topics described and analyzed in their relation to the growing humanitarianism and increasing spirit of community responsibility of the first decade of the twentieth century. "The old doctrines of extreme individualism and a purely competitive industrial system, relics of a rural civilization, were breaking down before the new complexities of American life." The author has achieved an excellent synthesis, gathering his materials from multifarious sources and presenting his problem with admirable clarity and directness.

The Farm Board, written by E. A. Stokdyk and Charles H. West and published by the Macmillan Company (pp. xi, 197), is a brief and popular presentation of "some of the problems facing agriculture, the scope of the Agricultural Marketing Act, and the possibilities and limitations of the Federal Farm Board in dealing with agricultural problems." A timely production, this study is a useful introduction rather than an exhaustive treatment of the topic.

One brief chapter of Mary Shaw Kuypers' *Studies in the Eighteenth Century Background of Hume's Empiricism* (University of Minnesota Press, pp. 140) is devoted to the Scotch philosopher's empiricism in politics, with particular reference to the principle of utility. Persons

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interested in the English utilitarian movement will find the author's comments suggestive.

In his volume entitled *That Man Dawes,* Paul R. Leach presents a friendly and informal recital of the accomplishments and activities of the present ambassador to the Court of St. James. The book is published by Reilly and Lee (pp. 349).

Banking Concentration in the United States, by Joseph S. Lawrence (Bankers Publishing Co., pp. 318) is an objective analytical study of banking tendencies in the United States, with due attention to problems of federal control. The case between large scale banking and unit banking is left a stalemate.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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[1] Unless otherwise indicated, all of the following United States documents bear the imprint: "Washington: Govt. Ptg. Off."

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